

**SUNSHINE ORDINANCE  
TASK FORCE**



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**ORDER OF DETERMINATION  
March 28, 2020**

**DATE DECISION ISSUED**  
January 21, 2020

**CASE TITLE – Michael Petrelis v. Sean Elsbernd and the Office of the Mayor**  
(File No. 19093)

**FACTS OF THE CASE**

The following petition/complaint was filed with the Sunshine Ordinance Task Force (SOTF):

**File No. 19093:** Complaint filed by Michael Petrelis against Sean Elsbernd and the Office of the Mayor for allegedly violating Administrative Code, (Sunshine Ordinance) Sections 67.21 by failing to respond to a request for public records in a timely and/or complete manner.

**HEARING ON THE COMPLAINT**

On October 15, 2019, the Complaint Committee acting in its capacity to hear petitions/complaints heard the matter.

Victor Young, Assistant Clerk, suggested that the complaint be revised to list Chief of Staff Elsbernd instead of Mayor Breed as the calendars in questions were for Mr. Elsbernd. The Petitioner agreed to revise the name party in the complaint.

Michael Petrelis (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Pretrelis stated that Chief of Staff Elbernd's full calendar was not provided and that the Office of the Mayor is not acting in good faith to provide the requested calendars.

Hank Heckel, Office of the Mayor (Respondent) provided a summary of the department's position. Mr. Heckel stated that a request for additional time to respond was enacted in order to allow or for consultation with others and that all available records were provided at the time of the request. Mr. Heckel state that the requirement to create and maintain a Proposition G calendar does not apply to Chief of Staff Elsbernd.

Action: Moved by Member Cate, seconded by Chair Martin, to find that the SOTF has jurisdiction, find that the requested records are public, and refer the matter to the SOTF for hearing.

The Committee referred the matter to the SOTF. On January 21, 2020, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

Michael Petrelis (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Petrelis stated that when he submitted his records request to the Mayor's Office requesting Chief of Staff Sean Elsbernd's calendar he expected a complete response and not a few single calendar entries. Mr. Petrelis has not heard from the Mayor's Office regarding Mr. Elsbernd's complete calendar. Mr. Petrelis believes that Mr. Elsbernd is keeping a calendar that the Mayor's Office is not producing.

Hank Heckel (Mayor's Office) (Respondent), provided a summary of the department's position. Mr. Heckel stated that this case is about document production versus creating or maintaining documents. Mr. Heckel stated that he asked for a ten-day extension in which to respond to Mr. Petrelis' records request. Mr. Heckel stated that his response was timely and that the requested records were provided. Mr. Heckel stated that the issue of whether the Chief of Staff is required to maintain a calendar was identified by the Ethics Commission. Mr. Heckel stated that Mr. Elsbernd does maintain a calendar and that it was produced to Mr. Petrelis. Mr. Heckel referred to Administrative Code, Section 67.29-7, which refers to documents that are maintained in the course of business which were provided. Mr. Heckle provided and referred to the Mayor's Records Retention Policy to the SOTF.

Vice-Chair J. Wolf opined that the records that do exist are consciously being deleted and whether or not there is a City retention policy, that was not signed by the current administration, the calendar is a public record. Vice-Chair J. Wolf stated that Mr. Elsbernd's calendar should have been retained under the retention policy and these records are being destroyed.

Action: Moved by Vice-Chair J. Wolf, seconded by Member Martin, to find that Sean Elsbernd and the Office of the Mayor, did not violate Administrative Code (Sunshine Ordinance), Section 67.21.

The motion failed.

Mr. Heckel stated that the first he had heard of 67.26 raised was by a nonparty and that he was unaware procedurally that a nonparty could raise a new basis for a complaint in a file where it was never been addressed in either the filings or the argument. Mr. Heckel stated that he is aware that Anonymous is raising an issue

of redactions that were unidentified. Mr. Heckel stated that the redactions were for cell phone numbers and personnel information.

Chair B. Wolfe stated that it is presumed that all documents are public records until Respondent cites that it is not and that it can be withheld. Chair B. Wolfe stated that if a record is withheld, then it is presumed it is a violation. Chair B. Wolfe stated that the SOTF has had problems in the past with finding no violations versus closing the file.

Mr. Heckel stated that he thought it procedurally improper for a nonparty to raise a violation that was never discussed and believes that it puts the respondent at a disadvantage.

Chair B. Wolfe stated that the SOTF gets responses from members of the public and respondents all the time regarding subjects that are applicable and that this matter speaks to the complaint because so many of Mr. Elsbernd's calendar entries were deleted.

#### FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF found that Sean Elsbernd and the Office of the Mayor violated Administrative Code (Sunshine Ordinance), Section 67.26, by failing to keep withholding to a minimum.

#### DECISION AND ORDER OF DETERMINATIONS

On January 21, 2020, moved by Action: Moved by Chair B. Wolfe, seconded by Vice-Chair J. Wolf to find that Sean Elsbernd and the Office of the Mayor violated Administrative Code (Sunshine Ordinance), Section 67.26, by failing to keep withholding to a minimum.

The motion FAILED by the following vote:

Ayes: 2 - Hyland, J. Wolf  
Noes: 4 - B. Wolfe, Martin, Yankee, LaHood  
Absent: 2 - Tesfai and Hinze

  
Bruce Wolfe, Chair  
Sunshine Ordinance Task Force

cc. Michael Petrelis (Petitioner/Complainant)  
Hank Heckel, the Office of the Mayor (Respondent)