

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION
June 15, 2021

DATE DECISION ISSUED
January 6, 2021

CASE TITLE – Anonymous v. Chief William Scott, Sgt. Brian Rodriguez, Sgt. Michael Andraychak and the Police Department
(File No. 19128)

FACTS OF THE CASE

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

File No. 19128: Complaint filed by Anonymous against Chief William Scott, Sgt. Brian Rodriguez, Sgt. Michael Andraychak and the Police Department for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 67.25, 67.26, 67.27 and 67.29-7(a) by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

HEARING ON THE COMPLAINT

On October 20, 2020, the Complaint Committee acting in its capacity to hear petitions/complaints heard the matter.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that he requested records having to do with the police raid on journalist Brian Carmody which both the Police Department and the FBI participated in. Anonymous stated that the Police Department denied that the requested records are public citing the California Public Records Act and the Sunshine Ordinance. Anonymous stated that he found an email from Brian Rodriguez asking about a forensic analysis to be performed on Mr. Carmody's computer using a different domain than sfgov.org. Anonymous stated that he sent to Mr. Rodriguez on his official email address a request to provide all copies of the email thread using all his other domains. Anonymous stated that the Police Department refused to provide the requested records. Anonymous cited *City of San Jose v. Superior Court* (2017).

Sgt. Michael Andraychak (Police Department) (Respondent), provided a summary of the department's position. Sgt Andraychak stated that Anonymous

did not follow the protocols for a Sunshine request and when the request was received on December 2, 2019, by Sgt. Brian Rodriguez, he did not know what to do with it. Sgt. Andraychak stated that it was forwarded to him on December 4. Sgt. Andraychak also stated that Anonymous' request did not follow the standard protocols of an Immediate Disclosure Request. Sgt. Andraychak stated that Mr. Rodriguez did not have responsive records from his personal email account. Sgt. Andraychak stated that his office did refer Anonymous to the Federal Bureau of Investigation (FBI) for their records.

Action: Moved by Member Yankee, seconded by Member Schmidt, to find jurisdiction, that the requested records are public and to refer the matter to the SOTF for hearing.

The motion PASSED by the following vote:

Ayes: 3 - Yankee, Schmidt, Hinze
Noes: 0 - None

On January 6, 2021, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that he sent an Immediate Disclosure Request to Sgt. Brian Rodriguez for a specific email. Anonymous requested a specific email thread written by Sgt. Rodriguez on his rcf1.gov email account and that he signed it as a San Francisco Police Department officer. Anonymous also noted that he was told that Sgt. Rodriguez was participating in an investigation with the Silicon Valley Regional Computer Forensics Laboratory (SVRCFL). Anonymous stated that instead of indicating whether records existed or a justification for withholding Respondents told Anonymous to request the records from the FBI. Anonymous stated that Sgt. Rodriguez is a City employee not an employee with the FBI and cited the SVRCFL Memorandum of Understanding. Anonymous believes that this is a clear *City of San Jose v. Superior Court of Santa Clara County*, (cal.2017) case because the records are located on Sgt. Rodriguez's other accounts. Anonymous stated that he has evidence that the record exists and that the Department is required to provide it.

Sgt. Michael Andraychak (Police Department) (Respondent), provided a summary of the department's position. Sgt. Andraychak stated that the request was an Immediate Disclosure Request for emails by Sgt. Rodriguez that was not routine. Sgt. Andraychak noted that Anonymous is a routine requestor and who knows there is a process that records requests should be sent to the Custodian. Sgt. Andraychak stated that there are records requested by Anonymous and identified by Sgt. Rodriguez that they are not providing because there is an ongoing open criminal investigation and cited Government Code 6254(f). Sgt. Andraychak stated that the Department is willing to provide emails, that were

requested by another requestor that they are willing to provide again. Sgt. Andraychak cited the SVRCFL MOU regarding FBI records

A question and answer period occurred. The parties were provided an opportunity for rebuttals.

Action: Moved by Member Yankee, second by Member Hinze to find a violation of Administrative Code, Sections 67.26 and 67.27 by failing to keep withholdings to minimum and failing to provide justification for withholding.

Member Yankee rescinded his motion.

Chair Wolfe noted that Anonymous is asking for the entire email thread not just the single email. Chair Wolfe stated that Anonymous is asking that part of the emails produced and delivered to the requestor with the entire metadata. Chair Wolfe stated that Anonymous wants the entire email string sent to Lt. Torres.

Member Schmidt stated that Sgt. Andraychak is the person most knowledgeable to report on this matter on behalf of the Police Department.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF found that the Police Department violated Administrative Code (Sunshine Ordinance), Sections 67.26 and 67.27, by failing to keep withholdings to a minimum and failing to provide justification for withholding. In addition, the SOTF ordered the production of all emails in that discussion thread under the subject line of 190149152/Carmody/SVRCFL Lab#SV-19-0033.

DECISION AND ORDER OF DETERMINATIONS

Action: Moved by Chair Wolfe, second by Member Wong, to find a violation of Administrative Code, Sections 67.26 and 67.27, by failing to keep withholdings to a minimum and failing to provide justification for withholding. In addition, the SOTF ordered the production of all emails in that discussion thread under the subject line of 190149152/Carmody/SVRCFL Lab#SV-19-0033.

The motion PASSED by the following vote:

Ayes: 6 - Wolfe, Wong, Yankee, Hinze, LaHood, Hyland

Noes: 1 - Schmidt

Action: Moved by Chair Wolfe, second by Member Hyland, to find a violation of Administrative Code, Section 67.21(e), for not sending a knowledgeable representative to the hearing.

Public Comment:

None.

The motion FAILED by the following vote:

Ayes: 4 - Wolfe, Hyland, LaHood, Wong

Noes: 3 - Schmidt, Yankee, Hinze

Absent: 0 - None

A handwritten signature in blue ink, appearing to be 'BW', enclosed within a circular scribble.

Bruce Wolfe, Chair
Sunshine Ordinance Task Force

cc. Anonymous (Petitioner/Complainant)
Chief William Scott, Sgt. Brian Rodriguez, Michael Andraychak and the Police
Department (Respondents)