

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION
May 5, 2023

DATE DECISION ISSUED
August 4, 2021

CASE TITLE – File No. 20079

File No. 20079: Complaint filed by Shane Anderies against District Attorney’s Office and Chesa Boudin for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(e) failing to respond to a records request in a timely and/or complete manner; 67.25 by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner; 67.26 withholding kept to a minimum and 67.27 failing to provide justification for withholding responsive documents.

HEARING ON THE COMPLAINT

On March 16, 2021, the Complaint Committee acting in its capacity to hear petitions/complaints heard the matter.

Action: Moved by Chair Schmidt, seconded by Member Stein, to find that the SOTF has jurisdiction, that the records are public and referred the matter to the full SOTF for hearing. In addition, the Committee requested that the Respondent provide information regarding how their search was conducted and what search terms were used. The Committee requested the Complainant provide information regarding their rationale, in this specific case, about Attorney Client Privilege and a subsequent response from the Respondent.

The motion PASSED by the following vote:

Ayes: 2 - Stein, Schmidt
Noes: 1 - Forsley

On May 5, 2021, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

Action on Original Motion with Amendments: Moved by Member Padmanabhan, seconded by Member Frazier, to continue the matter to the next SOTF hearing to allow the Respondent time to conduct a Signal search for records within the next seven days and to allow the District Attorney’s Office to determine if a Signal search was performed on the original request. (The SOTF also requested that

the matter be monitored by the Compliance and Amendments Committee after the next SOTF hearing.)

The motion PASSED by the following vote:

Ayes: 11 - Padmanabhan, Frazier, Neighbors, Stein, Hyland, Yankee,
LaHood, Forsley, Schmidt Wong, Wolfe
Noes: 0 - None

On May 25, 2021, the Compliance and Amendments Committee acting in its capacity to hear petitions/complaints heard the matter.

Action: Moved by Chair LaHood, seconded by Member Neighbors, to request that the District Attorney's Office verify that a comprehensive search of all department communications has been completed, to search for communications to and from Chesa Boudin regarding Mr. Thomas Ostly, including, but not limited to, email, Signal and other messaging apps and request that conversation settings for any conversations that included Chesa Boudin within the department and that the results be forwarded to the SOTF Administrator within two weeks to be reviewed at the next Compliance and Amendments Committee hearing.

The motion PASSED by the following vote:

Ayes: 3 - LaHood, Neighbors, Wong
Noes: 0 - None

On June 22, 2021, the Compliance and Amendments Committee acting in its capacity to hear petitions/complaints heard the matter.

Action: Moved by Chair LaHood, second by Member Neighbors, to continue the matter to the call of the chair. The committee requested that the SOTF Deputy City Attorney provide guidance or an analysis on the appropriateness of the SOTF pursuing information regarding settings on application/programs such as "Signal" which allow for the auto deletion of messages and to find out if it falls under the umbrella of metadata information.

The motion PASSED by the following vote:

Ayes: 3 - LaHood, Neighbors, Wong
Noes: 0 - None

On July 27, 2021, the Compliance and Amendments Committee acting in its capacity to hear petitions/complaints heard the matter.

Action: Moved by Member Neighbors, seconded by Member Wong, to find that District Attorney Chesa Bourdin and the District Attorney's Office have complied

with the Committee's request to conduct a search of "Signal" and other messaging applications related to the original records request and have found no additional responsive records. In addition, the Committee referred the matter back to the SOTF.

The motion PASSED by the following vote:

Ayes: 3 - Neighbors, Wong, LaHood

Noes: 0 - None

On August 4, 2021, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

Moved by Member Padmanabhan, seconded by Member Schmidt, to find the District Attorney's Office violated Administrative Code, Section 67.21(b) by failing to respond in a complete and/or timely manner and 67.21(c) by failing to provide assistance to the Petitioner.

The motion PASSED by the following vote:

Ayes: 9 - Padmanabhan, Schmidt, LaHood, Neighbors, Yankee, Wolfe,
Wong, Stein, Forsley

Noes: 0 - None

Absent: 1 - Hyland

The Order of Determination was approved
by the Sunshine Ordinance Task Force
on: May 3, 2023.

cc. Petitioner/Complainant
Respondent