



SUNSHINE ORDINANCE TASK FORCE
Compliance and Amendments Committee
CITY AND COUNTY OF SAN FRANCISCO
MINUTES

REMOTE REGULAR MEETING

January 26, 2021
4:30 PM

Members: Lila LaHood (Chair), Jennifer Wong and Bruce Wolfe

1. CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES

Chair LaHood called the meeting to order at 4:34 p.m. On the call of the roll Chair LaHood and Members Wolfe and Wong were noted present. A quorum was present.

There were no agenda changes.

2. Approval of the October 27, 2020, November 24, 2020 and December 22, 2020, Compliance and Amendments Committee meeting minutes.

Action: Moved by Member Wolfe, seconded by Member Wong, to continue approval of the October 27, 2020, meeting minutes until the February 23, 2021, Compliance and Amendments Committee meeting as amended.

Public Comment:

Peter Warfield stated he was glad that the minutes had extensive material. Mr. Warfield noted that there are no instructions on the Agenda regarding how to mute and unmute oneself in order to provide public comment.

Anonymous proposed corrections, under File No. 20074 noting that not all responsive records are exempt. Anonymous stated that in File No. 20066 the request was for audio recordings and records withheld under Penal Code 832.7(b)(6). 19044 Anonymous

Wynship Hiller stated that he spoke during Item 4 on October 27, 2020 Compliance and Amendments Committee meeting and provided a written transcript to the SOTF Administrator.

The motion PASSED by the following vote:

Ayes: 3 - Wolfe, Wong, LaHood

Noes: 0 - None

Member Wolfe request the audio recording be reviewed to confirm the proposed amendments to the minutes.

Action: Motion made by Member Wolfe, seconded by Member Wong, to continue approval of the October 27, 2020, minutes and to review proposed amendments.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 3 - Wolfe, Wong, LaHood

Noes: 0 - None

Action: Moved by Member Wolfe, second by Member Wong to approve the November 24, 2020, Minutes with no changes or edits.

The motion PASSED by the following vote:

Ayes: 3- Wolfe, Wong, LaHood

Noes: 0 - None

Public Comment:

Anonymous stated that his comment pertains to the December 22,2020, minutes.

Peter Warfield expressed appreciation regarding the chair asking for public comment on the changes. Mr. Warfield asked who was supposed to provide the audio? Mr. Warfield stated that written public comment is 150-word summaries.

Action: Moved by Member Wolfe, seconded by Member Wong, to accept the corrections as stated by Anonymous for the December 22, 2020, minutes pending corroboration with the audio.

Public Comment:

None.

The motion PASSED by the following vote:

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

3. **Public Comment:** Members of the public may address the Committee on matters that are within the Committee's jurisdiction but not on today's agenda.

Peter Warfield noted that he was unable to mute, unmute or find indications as to what to do if you want to speak on the agenda description. Mr. Warfield stated that he wants to see all committee members. Mr. Warfield noted that at the Rules Committee hearing, several points were made by Supervisor Peskin regarding backlogs and inadequate staffing.

Anonymous express support of Mr. Warfield's comments. Anonymous noted that the Mayor's Office on Disability provides ways that you can speak and participate in public comment at public meetings. Anonymous noted his agreement that the backlog is a problem.

Wynship Hillier stated that a member of the public is allowed to submit 150-word summaries of their testimony.

Denta Tadesse stated that and it seems that the Committee is taking the position that they don't have to take written summaries at all. Mr. Tadesse has tried to be the example for opening meetings, and records requests and he has found that transparency has gone away. Mr. Tadesse noted that City Attorney memos are no longer available to the SOTF and the public.

4. **File No. 19044:** Complaint filed by Anonymous against Dennis Herrera and the Office of the City Attorney for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 61.26, 61.27, Government Code Sections 6253, 6253.9 and 6255, by failing to respond to a public records request in a timely and/or complete manner.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that as of January 3, 2021, the City Attorney's Office has not complied with the request and produced one of the two emails on January 25, 2021. Anonymous stated that only issue outstanding is that the City Attorney's Office is now claiming California Evidence Code 1040. Anonymous stated that they are required to provide a redaction key which they have not. Anonymous stated that it is impossible for a particular piece of information to be a threat to the City's computer system. Anonymous noted the City Attorney's Office cannot claim that some of the evidence was received in confidence because he has the email in question. Anonymous opined that the entire email is a public record, and some information is not a sufficient reason to withhold a public record.

John Cote (City Attorney's Office) (Respondent), provided a summary of the department's position. Mr. Cote stated that his office will not produce a redaction key.

Mr. Cote stated that four exemptions do not apply and there is no need for a key. Mr. Cote stated that all four reasons for the redactions were provided. Mr. Cote stated that his department is in line with the Dept. of Technology requirements. Mr. Cote stated that the City Attorney's Office response is consistent with what they have done previously Mr. Cote stated that there are four exemptions in which the information poses a security risk. Mr. Cote stated that the Department of Technology has worked with Anonymous and Evidence Code 6252(e) applies to all excerpts of a public records. Mr. Cote stated that California Evidence Code 1040 is another basis to withhold a portion of the record. Mr. Cote stated that they are citing what the Department of Technology has previously confirmed, the records post a security risk. Mr. Cote stated that he gave proper justifications for the redactions and all four bases have been applied.

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

Action: Move by Member Wolfe, seconded by Member Wong, that the Compliance and Amendments Committee cease monitoring this file no. 19044 and close the file.

Public Comment:

Peter Warfield stated that this case sets an example for the general public and other agencies. Mr. Warfield stated that the City Attorney's Office provided the material and Anonymous could agree that the Order of Determination was complied with. Mr. Warfield stated that the Petitioner has received redacted information that was not provided properly.

The motion PASSED by the following vote:

Ayes: 3 - Wolfe, Wong, LaHood

Noes: 0 - None

5. **File No. 19047:** Complaint filed by Anonymous against Mayor London Breed, Hank Heckel and the Office of the Mayor for allegedly violating Administrative Code, (Sunshine Ordinance) Sections 67.21 and 67.26 and 67.27 and Government Code (CPRA) 6253.9, 6253, and 6255, by failing to respond to a request for public records in a timely and/or complete manner.

Chair LaHood opened the discussion and provided a summary.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that all three violations on the Order of Determination are correct and that the Mayor's Office has not provided the requested records. Anonymous stated that the Mayor's Office chose to provide the Mayor's Prop G, Non-Prop G calendar and will provide a key on a rolling basis. Both Anonymous and Hank Heckel (Mayor's Office) are jointly requesting that the Committee continue the

matter to the March Compliance and Amendment hearing with the assumption that all records will be provided prior to the meeting.

Hank Heckel (Mayor's Office) (Respondent), provided a summary of the department's position. Mr. Heckel agreed with some of Anonymous' statements and the Mayor's Office has agreed to provide the metadata in the calendar matters. Mr. Heckel stated that his office has provided an example consistent with the Dept. of Technology advise and will be consistent with what the Department's advice. Mr. Heckel stated that Anonymous proposed 60 days to provide all requested records. Mr. Heckel consulted extensively with the Dept. of Technology and did provide records the day they said the information was disclosable.

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

Action: Moved by Member Wong, seconded by Member Wolfe, to continue the matter to the Call of the Chair for continued monitoring.

Public Comment:

Peter Warfield stated that the SOTF should be satisfied with this reasonable solution with respect to timing because the petitioner may have been pressured into agreement.

The motion PASSED by the following vote:

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

The meeting was recessed from 6:17 p.m. to 6:27 p.m.

6. **File No. 19145:** Complaint filed by Chris Kohrs against the Police Commission for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.5 and 67.21, by failing to respond to a public records request in a timely and/or complete manner.

Chair LaHood opened the discussion and provided a summary and noted that this case has been before the SOTF and the issue is regarding closed session recording of deliberations.

Chris Kohrs (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Kohrs stated that he has not received a copy of the closed session recording.

Sgt. Stacy Youngblood (Police Commission) (Respondent), provided a summary of the department's position. Sgt. Youngblood noted that the recording exists and has not been provided to the Petitioner because a section of the hearing was a closed session. Sgt.

Youngblood stated that the Commissioners voted not to disclose the recording based on attorney/client privilege.

Member Wolfe stated that it was not made clear that the assertion of attorney/client was made at the time of the hearing. Member Wolfe stated that Mr. Kohrs had not received the recording because Sgt. Youngblood testified that the recording did not exist. Member Wolfe noted that Sgt. Youngblood testified that there is no set standard on whether they do or do not record closed session deliberations.

In response to Member Wolfe's statement Sgt. Youngblood stated that the Police Commission voted to not disclose the recording because attorney/client privilege was asserted and because the recording was considered part of a personnel record. Sgt. Youngblood cited Penal Code 832.7(a) for withholding personnel records. Sgt. Youngblood stated that Mr. Kohrs was terminated and lost his appeal. Sgt. Youngblood stated that closed session hearings are always recorded.

Mr. Kohrs stated that he did receive the recording but was referring to closed session deliberations that are missing and noted that specific statements were not provided in the transcript.

Member Wolfe noted that the Respondent cited Penal Code 832.7(a) where the content of the information is not disclosable in any criminal proceeding and that this is not a public record.

Member Wolfe suggested that the Commission's position regarding closed sessions seems to have been correct but can the rest of it be disclosed. Member Wolfe asked what is being withheld from the petitioner. Member Wolfe stated these issues are not under the jurisdiction of the SOTF.

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

Action: Moved by Member Wolfe, seconded by Member Wong, to refer the matter back to SOTF with the Committee's findings that the recording of the closed session exists and that while some recordings have been produced to the petitioner, under the justification of Penal Code 832.7. In addition, the Committee finds that the records are public under Administrative Code 67.8-1. The Committee noted that they are not acting or making judgements Penal Code 832.7(a) which the respondent states is justification. In addition, the SOTF should consider Penal Code 832.7(b) regarding the withholding of records as a test for future complaints.

Public Comment:

Anonymous stated that he could not find Penal Code 832.7 in original response to Mr. Kohrs. Anonymous believes that the Respondent mistakenly stated that this is a personnel matter. Anonymous opined that under the CPRA, the recording may be

exempt from public disclosure, and it is possible that it may be the case that is disclosable Penal Code 832.7(1)(a)(2).

Anonymous #2 stated that she doesn't understand what is difficult, because Sgt. Youngblood is saying he can't release it then he can't release it.

Peter Warfield noted his hopes that committee members are taking into account all that has been disclosed. Mr. Warfield noted the conundrum is the difference between something that is a public record or is not disclosable.

Anonymous #3 stated that he believes the truth is misrepresented. Anonymous noted that Mr. Kohrs asked that the records be furnished as public records and the Custodian wasn't providing them.

Denta Tadesse discussed his own experience with this type of issue in File No. 18010. Mr. Tadesse believes he should have had confidentiality protections.

Member Wolfe opined that the SOTF should challenge Penal Code 832.7(a) because 832.7(b) provides for the disclosure of those records under certain conditions. Member Wolfe noted that in order for the SOTF to consider (b), the Committee would have to know the merits of the hearing that was held in closed session or the issues relating to it. Member Wolfe stated that the Committee can compel because you can't just make a blanket justification when requesting specific records that are being withheld.

Public Comment:

Anonymous asked for a small change to the motion because 67.27 does not require that they come to the first SOTF hearing and requires the original response.

Peter Warfield pointed out the changes and the long delay from when he pushed *6 to unmute and nothing happened.

The motion PASSED by the following vote:

Ayes: 3 – Wolfe, Wong, LaHood
Noes: 0 – None

7. **File No. 19140:** Complaint filed by Stephen Malloy against the Department of Human Resources for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.25, by failing to respond to a request for public records in a timely and/or complete manner.

Chair LaHood opened the discussion and provided a summary and noted that the issue is compliance with the Order of Determination and that Human Resources did not send someone to the original hearing.

Stephen Malloy (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Malloy stated that the Department has not provided the requested records.

The Department of Human Resources did not send a representative to the hearing and did not notify the Administrator of their absence.

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

Chair LaHood noted that the respondent has not appeared at any Committee or SOTF hearing and has still not provided requested records.

Member Wolfe stated that the SOTF can refer to the matter to the District Attorney or the Ethics Commission and possibly to the Presiding Judge at the Superior Court. Member Wolfe stated that this matter should be escalated with a letter drafted to the department head if a representative does not appear at the next hearing.

Action: Moved by Member Wong, second by Member Wolfe, to refer the matter back to the SOTF with a recommendation for escalation due to noncompliance and that there have been no representatives available for appearance for SOTF hearings.

Public Comment:

Anonymous stated that the letter should be explicitly issued by the SOTF Chair and should cite 67.34 for official misconduct.

Stephen Malloy thanked everyone for their work and added that 67.34 specifically directs a willful violation to the department head and that this matter should proceed before the Board of Supervisors and Ethics Commission.

The motion PASSED by the following vote:

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

8. **File No. 19114:** Complaint filed by Shane Anderies against Tyler Vu and the Public Defender's Office for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.24, 67.25, 67.26, 67.27 and 67.29 by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

Shane Anderies (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Anderies stated that the Order of Determination has not been complied with. Mr. Anderies stated that he has not received his requested documents. Mr. Anderies stated that he received a letter explaining that all the records at

issue were not public records. Mr. Anderies requested that this matter be referred to the Ethics Commission.

Tyler Vu (Public Defender's Office) (Respondent), provided a summary of the department's position. Mr. Vu stated that Mr. Anderies statement is not accurate. Mr. Vu noted that at the previous SOTF meeting pages 1900 and 1901 were reviewed by the SOTF and Chair Wolfe stated that no justifications for the redactions were made. Mr. Vu stated that page 1901 was related to a manger's meeting and the decision was that those items did not have to be turned over. Page 1900 also pertained to an item on the same Agenda. Mr. Vu stated that he wrote a letter to Mr. Anderies explaining that those emails were also part of a formulation of an agenda and did not have to be disclosed.

Chair LaHood stated that the SOTF asked if the requested documents from the Public Defender's Office were determined not public and that cited justification for redactions were provided. Chair LaHood noted that with each hearing the issues get narrowed and record requests are unfulfilled.

Member Wolfe stated that the Committee should conclude the matter and report that we either found compliance that the additional documents were determined to not be public records.

Action: Moved Member LaHood, second by Member Wolfe, to end compliance activity on this case and close the matter.

Public Comment:

Anonymous stated that this motion is wrong, and the Committee should ask its Deputy City Attorney for advice. Anonymous opined that the three emails at issue are records. Anonymous stated that the fact that the meetings being discussed in the emails are staff meetings does not mean the records are not "public records" under the CPRA. Anonymous noted that some specific parts might be exempt under specific laws or under Coronado, but the principle argued by this Committee has no basis in law.

Anonymous #2 agrees with the previous Anonymous commenter. Anonymous #2 stated that the motion that the Public Defender's Office decides what is public is wrong. Anonymous #2 asked why bother having a SOTF meeting, if SOTF says they cannot do anything further.

Denta Tadesse stated that through his experience with the SOTF, he does thank the SOTF for their time and consideration to past hearings. Mr. Tadesse stated that the public is coming to the SOTF and the SOTF should give those who have come forward more of a chance than the regular public.

The motion PASSED by the following vote:

Ayes: 3 - Wong, Wolfe, LaHood

Noes: 0 - None

9. **Announcements, Comments, Questions, and Future Agenda Items by Members of the Compliance and Amendments Committee.**

No new items to report.

10. **ADJOURNMENT**

There being no further business the meeting was adjourned at 9:45 PM.

APPROVED: 2/23/21
Compliance and Amendments Committee
Sunshine Ordinance Task Force

N.B. The Minutes of this meeting set forth all actions taken by the Sunshine Ordinance Task Force on the matters stated, but not necessarily in the chronological sequence in which the matters were taken up.