



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

REMOTE REGULAR MEETING

August 23, 2022
4:30 PM

Members: Lila LaHood (Chair), Jennifer Wong and Laurie Jones Neighbors

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

Chair LaHood called the meeting to order at 4:35 p.m. On the call of the roll Chair LaHood and Members Neighbors and Wong were noted present. A quorum was present.

2. Approval of the June 28, 2022, Compliance and Amendments Committee meeting minutes.

Action: Moved by Member Wong, seconded by Member Neighbors, to approve the June 28, 2022, meeting minutes.

Public Comment:

Mark Sullivan provided comment on Item 7 and 8.

The motion PASSED by the following vote:

Ayes: 3 - Wong, Neighbors, 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.

Speakers:

Mark Sullivan stated that it takes a few seconds to violate accountability especially when the official's money is not on the line.

Stiliyan Bejanski stated that the SOTF is not the only organization that helps with enforcement power. The courts may also provide support. Mr. Bejanski stated that the backlog and scheduling process should be on the webpage.

4. **File No. 21124:** Complaint filed by Marc Norton against the Department of Public Health (DPH) for violating Administrative Code (Sunshine Ordinance), Section(s) 67.21 by failing to provide guidance on locating records; 67.25 by failing to respond to an Immediate Disclosure Request in a timely manner; 67.26 by failing to keep withholding to a minimum and 67.27 by failing to provide justification for withholding.

Marc Norton (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Norton stated that despite the SOTF finding violations of the Department of Public Health this past April and memorializing them in an Order of Determination, he still has not received his requested records. Mr. Norton questioned what the consequences are when a City department continues to violate the Sunshine Ordinance and not produce documents.

Alison Hawkes (Department of Public Health (DPH)) (Respondent), provided a summary of the department's position. Ms. Hawkes stated that on April 12, 2021, the Custodian of Records contacted Mr. Norton asking him to narrow his request, which he did not. Ms. Hawkes stated that on September 25, 2021, DPH conducted a search for records and produced them to Mr. Norton. Ms. Hawkes stated that Mr. Norton made a request for additional records and 65 new documents were located and produced. Ms. Hawkes noted that DPH's responses were not timely, but they provided records and considers this case closed. Ms. Hawkes also acknowledged that no key for redactions was provided to Mr. Norton.

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

Action: Moved by Member Wong, seconded by Member Neighbors, to request a clear index of records for records that were provided to Mr. Norton by the Department of Public Health on or before his original request. The Committee also requested that the respondent provide a key to the redactions within 10 business days on or before September 8, 2022. The Committee requested that the index include a record of which document has been redacted, and an explanation of why it is redacted.

Public Comment:

Mark Sullivan recited Administrative Code 67.26 into the record noting that the key information is exempt and that the requested records can be released. Mr. Sullivan also recited Administrative Code 67.21(b).

The motion PASSED by the following vote:

Ayes: 3 - Wong, Neighbors, LaHood

Noes: 0 - None

5. **File No. 19124:** Complaint filed by Anonymous against Chief William Scott and Lt. R. Andrew Cox and the Police Department for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 67.25, 67.26, 67.27, by failing to by failing to assist in a timely or complete manner, by failing to provide a timely or complete response to a records request, by failing to provide rolling responses, by failing to withhold the minimal portion of public records, and by failing by provide written justification for withholding.

Anonymous (Petitioner) was not present for the hearing and did not inform the SOTF Administrator of their absence.

Lt. Lynn Reilly (Police Department) (Respondent), provided a summary of the department's position. Lt. Reilly acknowledged that the previous Custodian of Record did not provide the records timely. Lt. Reilly also stated that the petitioner submitted his Immediate Disclosure Request through a portal that was used for internal purposes and not regularly monitored for document requests. Lt. Reilly also stated that when records began to be produced, redaction keys were not located where they should be on the documents and needs to be corrected.

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

Action: Moved by Member Wong, seconded by Member Neighbors, to request that the Police Department and Lt. Reilly provide a link or the number of records associated with this file, check the public records portal for new records requests, that redactions are being keyed correctly and requests that compliance to this motion happen within 10 business days on or before September 8, 2022.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 3 - Wong, Neighbors, LaHood

Noes: 0 - None

6. **File No. 22057:** Complaint filed by Stiliyan Bezhanski against Chanbory Son and the Planning Department for allegedly violating California Public Records Act, Sections 6254(c)(k) regarding failure to redact personal contact information.

Stiliyan Bezhanski (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Bezhanski stated that in April 2022, he submitted a records request to the Planning Department. Mr. Bezhanski stated that he received his records which were unredacted. Mr. Bezhanski requested violations of California Public Records Act (CPRA) 6254(c) regarding records that are personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy and CPRA 6254(k) regarding the disclosure of records which are exempt or prohibited pursuant to federal or state law against the Planning Department.

Laura Lynch (Planning Department) (Respondent), provided a summary of the department's position. Ms. Lynch stated that on April 13, 2022, Mr. Bezhanski requested records and provided a specific address and name. Ms. Lynch stated her department provided those records on May 2, 2022, in a timely manner along with a redaction key for attorney/client privilege documents.

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

Action: Moved by Chair LaHood, seconded by Member Neighbors, to find that the SOTF has jurisdiction, and to refer the matter to the SOTF Deputy City Attorney for advice before the matter is heard at the SOTF.

Public Comment:

Mark Sullivan stated that regarding redactions of email and personal information that it boils down to the public information.

The motion PASSED by the following vote:

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

7. **File No. 21149:** Complaint filed by Mark Sullivan against David Steinberg and Public Works for allegedly violating Administrative Code (Sunshine Ordinance), Section(s) 67.25 and 67.34, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner and willful failure to discharge duties imposed by the Sunshine Ordinance.

Mark Sullivan (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Sullivan stated that he asked Mr. Steinberg for records regarding Green Benefits District Committees (GBD) and that Mr. Steinberg provided over 1,500 records of which 4 are responsive. Mr. Sullivan stated that those records do not include information on starting a GBD as requested. Mr. Sullivan

specifically stated that he was not requesting commercial advertisements, however they were provided. Mr. Sullivan stated that Mr. Steinberg provided over 2,000 records causing a delay and a violation of 67.34.

David Steinberg (Public Works (DPW)) (Respondent), provided a summary of the department's position. Mr. Steinberg stated that these records are the same set of records in 21069. Mr. Steinberg stated that Mr. Sullivan requested information on how to start a GBD from then manager Jeffrey Goldberg who is no longer at DPW. Mr. Steinberg worked with his IT department who identified over 8,500 responsive records and produced them to Mr. Sullivan. Mr. Steinberg stated that he worked with Mr. Sullivan to come up with responsive key terms for the search and kept him informed following the SOTF hearing. Mr. Steinberg stated that he completed four records searches which were provided to Mr. Sullivan.

Chair LaHood noted the challenges in finding a willful violation even if not exactly everything that was requested was produced. Chair LaHood understood Mr. Sullivan's frustration and noted the difficulties in finding a willful misconduct for someone who has been this responsive to this degree.

Member Neighbors stated that Mr. Steinberg has at all times at SOFT hearings, and after having questioned him several times, especially regarding Mr. Goldberg, there is not enough evidence to find a violation of 67.34" please correct to read "Member Neighbors stated that Mr. Steinberg has contradicted himself several times at SOFT hearings, especially when we have questioned him about Mr. Goldberg; however, it does not seem that we have enough evidence to justify a violation of 67.34 at this time."

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

No action was taken.

Public Comment:

Wynship Hillier provided the following written public comment: "I disagree with Mr. Sullivan that open records law supports his asking agencies to answer specific questions. There is FOIA precedent (applicable to the CPRA) to the effect that open records requests must be requests for records, not information. This precedent is cited in O'Reilly, *Federal Information Disclosure*. However, Mr. Sullivan is entitled to assistance in formulating a focused and effective request, and the word "focused" means not recovering a large number of unwanted records, which is the problem that he appears to be having. Finally, I believe that the proper procedure on this item would be to put the motion on the agenda up for a vote, so that all members will go on record as not supporting a referral for a finding of no willful noncompliance."

8. **File No. 21069:** Complaint filed by Mark Sullivan against David Steinberg and the Department of Public Works for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(b)(c) by failing to respond to a records request in a timely and/or complete manner and by failing to assist the requester, 67.25(a) by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner, CPRA Section 6253(c) by failing to notify the requestor of the possession of records of the agency and by failing to notify the person making the request of the determination and the reasons for withholding, CPRA Section 6253.1(a)(1) by failing to identify records and information that are responsive to the request or to the purpose of the request.

Mark Sullivan (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Sullivan stated that his first records request was dated April 28, 2021, and on May 3, 2021, records were identified as responsive. Mr. Sullivan stated that on May 12, 2021, Ms. Steinberg released three records claiming are activity of Mr. Goldberg. Mr. Sullivan stated that Mr. Steinberg released over 1,806 records and that only four of them are responsive which violates public records laws.

David Steinberg (Public Works) (Respondent), provided a summary of the department's position. Mr. Steinberg stated that after the November 2021 hearing, he worked closely with Mr. Sullivan to come up with workable search terms. Mr. Steinberg stated that each record has a key to the redaction. Mr. Steinberg stated that he has complied with the Order of Determination

Member Neighbors stated that it seems like Mr. Steinberg has produced what he is going to produce and that this matter should be closed.

Public Comment:

Liza Murawski stated that as a requestor it always falls on the burden of the requestor. Ms. Murawski feels that how something is worded and really selective privileged and it has happened to her and her cases is going on five years and she still has not received her records.

Action: Moved by Member Neighbors, seconded by Member Wong, that in the matter of 21069 that David Steinberg and Public Works have complied with the Order of Determination and that the matter is closed.

Public Comment:

None.

The motion PASSED by the following vote:

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

9. **Hearing to review the Behavioral Health Commission's compliance with the Sunshine Ordinance (sections listed below) for meetings that occurred after April 13, 2021,**

On April 6, 2022, the SOTF referred the matter to the Compliance and Amendments Committee to monitor the Behavioral Health Commission's meetings for compliance with the following sections of the Sunshine Ordinance:

- 67.7(a) by failing to provide an adequate description of the agenda items;
- 67.7(a) by failing to post their Agenda 72 hours in advance of the meeting;
- 67.7(b) by failing to provide a clear description of the matters;
- 67.7(b) by failing to post supporting documents on-line or make them available as soon as they are available;
- 67.7(g) by failing to include notices of rights under the Sunshine Ordinance on the agenda;
- 67.9(a) by failing to post supplementary documents for the meeting on the internet;
- 67.15(a) by failing to allow public comment for each item on the agenda.

In addition, the SOTF requests that the Behavioral Health Commission provide their manual or description of their procedures/practices implemented to address code sections listed. In an effort to document compliances with posting requirements of the Sunshine Ordinance, the SOTF requests that the Behavioral Health Commission maintain a log of when agendas and supporting documents are posted along with any relevant data.

Amber Gray (Petitioner) (Behavioral Health Commission) provided a summary of the department's position. Ms. Gray stated that she participated in a team building exercise and plans to get continued training and support from the BHC. Ms. Gray also stated that the BHC has updated their by-laws, is working to comply with the Brown Act and reaffirmed their training goals. Ms. Gray stated that there was a miss posting and that switching to the sfgov platform has caused multiple challenges.

Wynship Hillier (Petitioner) provided a summary of complaint. Mr. Hillier stated that there has been more than one adjudication from the SOTF and has ruled substantially against the BHC and on October 6 reaffirmed that ruling in April 2022. Mr. Hillier stated that violations that have continued since July 2020. Mr. Hillier noted that there have been four violations this month, that meetings are held like nothing is wrong and that the BHC lacks the will to comply with the agenda. Mr. Hillier continued stating that many agendas are boilerplate and copied over from the previous agenda.

Geoffrey Grier (Behavioral Health Commission) (Respondent), provided a summary of the department's position. Mr. Grier stated that Mr. Hillier is the only person complaining and threatening members of the BHC when he doesn't understand an item on the agenda.

Chair LaHood noted the importance of consistent work with City representatives to comply with the Ordinance and the Brown Act. Ms. LaHood stated that Mr. Hillier is looking for clearly posted agendas. Ms. LaHood stated that the goal is to help everyone through this efficiently and allow people to work more effectively because this will be adding another layer of work along with posting agendas on time.

67.7(a) provides an adequate description of more detail. Staff has been charged with creating the agenda, it goes to the co-chair for review of the agenda and if they are happy with the agenda, move on and add more information;

67.7(a) out of all posting, missed three agenda deadlines due to technical issues, not purposeful. High priority to ensure that the agenda is posted 72 hours in advance;

67.7(b) do the best to provide a clear description as per the Chair or Co-Chair;

67.7 (b) do the best to post supporting documents online and confirm that all documents are there;

67.7(g) relays the importance of including notices;

67.9(a) requires that everything they have is posted;

67.15(a) requires that the public should have an opportunity for public comment. Perhaps public comment is place incorrectly on the agenda.

Chair LaHood emphasized the need for follow up in October because the new website will be in place, which should facilitate the posting of agendas with supporting documents online, the posting of supplementary documents on the internet, and making sure that public comment is at the right point on the agenda and training.

Action: Moved by Member Neighbors, seconded by Member Wong, to continue the matter to the Call of the Chair.

Public Comment:

Liza Murawski serves on the BHC as a mental health advocate. Ms. Murawski has observed them for seven years, while the BHC was under investigation and when they did only two off site visits and during the Covid crises was absent.

Mark Sullivan wanted to emphasize 67.6(b) regarding description of the agenda. Mr. Sullivan noted the need to follow the law and they can't be lax about it.

Chair LaHood wants this item on the October Compliance and Amendments Committee agenda and anyone who has supporting documents can expect to have them on the agenda.

The motion PASSED by the following vote:

Ayes: 3 - Neighbors, Wong, LaHood

Noes: 0 - None.

10. **Items by Committee**

Chair LaHood stated that they plan to have some proposals for possible amendments to the Ordinance and that this item should be on the October agenda.

Chair LaHood also stated that San Franciscans for Sunshine will be making a presentation at the October meeting.

Public Comment:

Mark Sullivan stated that he understands miscommunication and wants stricter following of the law noting that everyone understands what is in the law but could add to confusion.

11. **ADJOURNMENT**

There being no further business the meeting was adjourned at 9:04 p.m.

APPROVED: October 25, 2022
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.