



SUNSHINE ORDINANCE TASK FORCE
Compliance and Amendments Committee
CITY AND COUNTY OF SAN FRANCISCO
MINUTES - DRAFT
REMOTE MEETING

August 25, 2020 – 4:30 PM

Members: Lila LaHood (Chair), Fiona Hinze and Bruce Wolfe

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

Chair LaHood called the meeting to order at 4:36 p.m. On the call of the roll Chair LaHood and Members Hinze and B. Wolfe were noted present. A quorum was present.

There were no agenda changes.

2. Approval of the July 28, 2020, Compliance and Amendments Committee meeting minutes.

Chair LaHood requested that the second sentence in item 5, File No. 19110, page 3 in Petitioner's comments be omitted.

Action: Moved by Member Hinze, seconded by Member Wolfe, to approve the July 28, 2020, meeting minutes as amended.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 3 - Hinze, Wolfe, 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:

Commenter No. 1 stated that the SOTF is providing an awesome and great service to the City.

4. **File No. 19114:** Complaint filed by Shane Anderies against Tyler Vu and the Public Defender's Office for 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 he requested from the Public Defender's Office specific documents regarding specific complaints about government employees and has received nothing.

Tyler Vu (Public Defender's Office) (PD) (Respondent), provided a summary of the department's position. Mr. Vu stated that Mr. Anderies' initial request was broad and voluminous and that clarification was requested. Mr. Vu stated that it is the job of the Public Defender's Office to represent and defend poor people, which is a private function. Mr. Vu referred to *Coronado Police Officers Ass'n v. Carroll* (2003) 106 Cal.App.4th 1001, which says that the logical applications of defense council is not a public function; it is private. Mr. Vu opined that this matter is a novel situation for the SOTF because the records request received from the PD's office were denied due to the private nature of the work they do. Mr. Vu noted in *Coronado* that the materials the Petitioner requested are kept for the purpose of defending private clients and therefore not disclosable.

Member Wolfe noted that under 67.21 when records are being withheld that are deemed to be public, the respondent must cite the law that exempts them from disclosure.

Mr. Anderies opined that *Coronado* has no applicability. Mr. Anderies stated that he is not requesting information or documents relating to representing the public. Mr. Anderies stated that this matter is about government employees behaving badly toward other government employees. Mr. Anderies noted that the PDs Office should have provided some evidence as to why they cannot provide the requested records.

Mr. Vu stated that Mr. Anderies asked for records pertaining to a State Bar complaint and that those records are not public. Mr. Vu opined that *Coronado* states that documents used for defense are not disclosable.

Chair LaHood stated that the confusion is that there is attorney/client privilege and the PD's Office is a public agency. The Committee doesn't know that everything Mr. Anderies is asking for is a public record. Chair LaHood opined that the PD office should provide information as to the documents being withheld.

Member Wolfe agreed with Chair LaHood in that the Committee needs to understand what part of the process in the PDs office is available for public disclosure. Member Wolfe stated that this case will be challenging for the SOTF to determine what information and records are considered public in the PDs office.

Sandy Fienman stated that he has been a public defender for 27 years. Mr. Fienman referred to *City of San Jose v. Superior Court*. Mr. Fienman stated that the issues in that case considered private were the PD's communicating emails and phone records used to collect information about police officers' unethical behavior. Mr. Fienman opined that this case questioned whether the police or the DA were hurting the PD's defense of their clients. Mr. Fienman noted that DA's office and the Police Department are not allowed to see what the PD's office does to protect their clients; that information is private. Mr. Fienman addressed *Coronado* which stated that emails are protected. Mr. Fienman stated that in *San Jose* the emails between PDs were private unless related to a public function, not necessarily to a case.

Member Wolfe stated that the SOTF struggles to understand the private nature that the PDs office provides but notes that there is attorney/client privilege in their cases. Member Wolfe opined that part of the struggle for the SOTF is not hearing a legal citation which does not allow them to reach a conclusion. Member Wolfe noted that Mr. Anderies is requesting records that are not in the database and Mr. Vu is saying that those records are their work product and are not publicly disclosable. Member Wolfe stated that the SOTF needs the assistance of their Deputy City Attorney (DCA) in order to render a decision.

Action: Moved by Member Wolfe, seconded by Member Hinze to continue the matter to the Call of the Chair and to request the SOTF Deputy City Attorney provide advice regarding whether the records sought by the Petitioner from the Public Defender are public or private.

Public Comment:

Frank Noto spoke as a member of a victim's advocacy organization. Mr. Noto stated that he also asked for records from the Public Defender's Office and he received a similar response from Mr. Vu. Mr. Noto asked the PD's office to comply with the Ordinance.

Alisa Exavior's listened to the Committee and agrees that this matter requires legal expertise.

The motion PASSED by the following vote:

Ayes: 3 - Wolfe, Hinze, LaHood

Noes: 0 - None

5. **ADJOURNMENT**

There being no further business the meeting was adjourned at 6:24 p.m.

APPROVED: DRAFT
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.