



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

**Hearing Room 408**  
**City Hall, 1 Dr. Carlton B. Goodlett Place**  
**San Francisco, CA 94102-4689**

**November 26, 2019**  
**4:30 PM**

**Regular Meeting**

**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 4:34 p.m. On the call of the roll Chair LaHood and Members Hinze and B. Wolfe were noted present. A quorum was present.

Paul A. Vander Waerdt requested a continuance of File No. 19080. The Respondent was present.

**2. Approval of the September 24, 2019, Compliance and Amendments Committee meeting minutes.**

**Action: Moved by Member Hinze, seconded by Member B. Wolfe, to approve the September 24, 2019, meeting minutes.**

Public Comment:  
None.

**The motion PASSED by the following vote:**

Ayes: 3 - LaHood, Hinze and B. Wolfe  
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:

Anonymous provided the following summary of their public comment:

*“Thank you for volunteering your time. City agencies regularly ignore requirements of the Sunshine Ordinance. Requesters without attorneys or legal sophistication may not even understand that records have been withheld or that they have appeal rights. I urge this Task Force to recommend to the Board of Supervisors a simple amendment to the Sunshine Ordinance requiring a notice of requestors' rights be added to every public records response by the City. Please see my draft. It would remind requestors of their rights to free appeals to SOTF and Herrera, without retaining an attorney, among other rights. The City already does this for agendas and minutes - why not for public records? On a positive note, City CIO Linda Gerull has invited me to meet with her and the CISO over the past few weeks on consistent recommendations and tooling for electronic metadata. Good progress is being made.”*

4. **File No. 19080:** Complaint filed by Paul A. Vander Waerdt against the Dept. of Homelessness and Supportive Housing for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.25 for failing to respond to an Immediate Disclosure Request in a timely manner. (00:04:46 - 00:08:47)

SOTF Administrator Leger noted that Paul A. Vander Waerdt (Petitioner) notified the SOTF prior to the meeting that he was unavailable to attend the meeting.

Abigail Stewart-Kahn (Department of Homelessness and Supportive Housing) (Respondent), provided a summary of the department's position. Ms. Stewart-Kahn stated that the Department had provided documents in response to Mr. Vander Waerdt's request in a timely manner. Ms. Stewart-Kahn stated that there are still outstanding issues around Mr. Vander Waerdt's request which need clarification.

**Action: Moved by Chair LaHood, seconded by Member Hinze, to continue the matter to the call of the chair.**

Public Comment:

None.

**The motion PASSED by the following vote:**

Ayes: 3 - LaHood, Hinze and B. Wolfe

Noes: 0 - None

5. **File No. 19103:** Complaint filed by Anonymous against Mayor London Breed, Hank Heckel and the Mayor's Offices for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 67.25 and 67.26, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner. (00:08:59 - 00:40:23)

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that he submitted a records request for the Mayor's future calendar based on Government Code 6254(f) was withheld due to rule of reason analysis. Anonymous stated that he filed a calendar request to the Supervisor of Records which also was denied on the basis of Supreme Court case *Times Mirror Company v. Superior Court*. Anonymous stated that the Mayor's office did provide her press calendar but withheld her outlook entries. Anonymous stated that the SOTF heard a case against the District Attorney's Office wherein the DA's future calendar was not provided and the SOTF opined that the records were public.

Hank Heckel (Office of the Mayor) (Respondent), provided a summary of the department's position. Mr. Heckel stated that his office received the Immediate Disclosure Request and responded the following day in a timely manner. Mr. Heckel stated that based on Government Code 6254(f), the rule of reason analysis and security interests of the Mayor's meetings, the future calendar was withheld from disclosure. Mr. Heckel stated that the Mayor's Press calendar was provided. Mr. Heckel stated that Anonymous requested specific times and locations of meetings. Mr. Heckel stated the Police Department consults with the Mayor's Office and provides security at all internal and external meetings and to reveal this information would undermine security. Mr. Heckel stated that the Supervisor of Records stated there is a process in place so that the Police Department can plan and provide security. Mr. Heckel stated that to provide the Mayor's future calendar to Anonymous would impact security procedures.

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

**Action: Moved by Member Wolfe, seconded by Member Hinze, to find that the SOTF has jurisdiction, find that the requested records are public and to refer the matter to the SOTF for hearing.**

Public Comment:

Michael Petrelis provided commentary on his own experience with Mayor Breed while she was on the Fire Commission with regard to her calendar and asked the Committee to vote in favor of Anonymous.

**The motion PASSED by the following vote:**

Ayes: 3 - B. Wolfe, Hinze, LaHood  
Noes: 0 - None

6. **File No. 19108:** Complaint filed by Anonymous against City Attorney Dennis Herrera, Elizabeth Coolbrith and the Office of the City Attorney for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.25, 67.27, 67.29-5, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner, failing to respond to a public records request in a timely manner and/or complete manner. Failing to justify withholding of records and failing to maintain a Proposition G Calendar. (00:40:29 - 00:57:44)

**Action: Moved by Member Wolfe, seconded by Member Hinze, to reject Respondent's request for a continuance.**

**Public Comment:**

Michael Petrelis provided commentary on how City Attorney Herrera is not a friend of Sunshine and the absence of a representative from the City Attorney's Office for this matter. Mr. Petrelis applauded Anonymous for pursuing his case.

Hank Heckel stated that he is not aware of how the City Attorney's Office works and suggested that the SOTF check in with their office to see if someone can make it to the hearing.

Anonymous stated the following: Please reject the Respondents' request for continuance. I have a right to a 45-day hearing, the City Attorney or his representative has a mandatory obligation to attend these hearings under SFAC 67.21(e), and Mr. Herrera must find someone in his ~300 employee, ~150 attorney, department to defend this case, even if it is not Mr. Cote.

**The motion PASSED by the following vote:**

Ayes: 3 – B. Wolfe, Hinze, LaHood

Noes: 0 - None

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that the City Attorney's Office should maintain a Prop G calendar and a Non-Prop G calendar. Anonymous stated that the Prop G calendar should have been provided timely and was not. Anonymous stated that City Attorney does not maintain a Non-Prop G calendar. Anonymous maintains that the Respondent did not respond in a timely manner. Anonymous stated that upon review of the calendars submitted by the City Attorney, there are no time or location entries which is a violation. Anonymous stated that the City Attorney's Office did not provide legal justifications for not including this information in their response.

City Attorney's Office (Respondent), was unavailable for the hearing.

**Action: Moved by Member Wolfe, seconded by Member Hinze, to find that the SOTF has jurisdiction, find that the requested records are public and to refer the matter to the SOTF for hearing.**

Public Comment:

None.

**The motion PASSED by the following vote:**

Ayes: 3 – B. Wolfe, Hinze, LaHood

Noes: 0 - None

7. **File No. 19111:** Complaint filed by Michael Petrelis against Supervisor Rafael Mandelman for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a request for public records in a timely and/or complete manner. (00:57:48 - 01:21:26)

Michael Petrelis (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Petrelis stated that in early October he submitted an Immediate Disclosure Request to Supervisor Mandelman's office asking for emails, texts and calendar entries. Mr. Petrelis stated that as of October 26, 2019, he had received emails and over 500 pages of his requested materials. Mr. Petrelis stated that he has not received Supervisor's texts. Mr. Petrelis stated that he received a letter from Tom Temprano of the Supervisor's office asking that he narrow the scope of his request as it was voluminous, citing the that there were specific technical challenges, which Mr. Petrelis did.

Tom Temprano (Chief of Staff, Supervisor Mandelman's Office) (Respondent), provided a summary of the department's position. Mr. Temprano stated that as of November 26, 2019, his office has provided over 880 pages of records to the Petitioner on a rolling basis as the Petitioner requested. Mr. Temprano stated that he asked Mr. Petrelis to narrow the scope of his request because it was voluminous and processing the response has taken over 30 hours of staff time. Mr. Temprano stated that he has one outstanding item to provide to the Petitioner which requires access to the Supervisor's personal cell phone. Mr. Temprano asked the Committee to dismiss the complaint because the Supervisor's Office has made a good faith and timely effort to comply with Mr. Petrelis's Immediate Disclosure Request.

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

**Action: Moved by Member Wolfe, seconded by Member Hinze, to find that the SOTF has jurisdiction, that the requested records are public and to refer the matter to the SOTF for hearing.**

Public Comment:

Anonymous provided the following summary of their public comment:

*‘The City must accept burden in responding to requests; the Respondents’ claim that the request is “burdensome” is irrelevant. Purportedly acting in “good faith” does not negate all Sunshine violations. Moreover, there may be further violations the SOTF should investigate:*

*SFAC 67.29-7 - The technical inability to produce personal text messages about public business may be a violation of keeping correspondence in a professional and business-like manner. See also SOTF 19091, where the Mayor’s Office has been unable to produce certain personal instant message records it admits are public records.*

*SFAC 67.29-5 - Did the respondent provide all Prop G calendar information?*

*SFAC 67.26 & 67.67 - requires "clear reference" to a statute or case law for every redaction. Example: P325 of the calendar record - why is it redacted?"*

Hank Heckel stated that it is practically and technically difficult to respond to a records request for texts. Mr. Heckel noted that it is the responsibility of the owner to conduct an email search personally and there are challenges in responding to those types of requests.

**The motion PASSED by the following vote:**

Ayes: 3 – B. Wolfe, Hinze, 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. (01:21:31 - 01:43:13)

Shane Anderies (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Mr. Anderies stated that his office sent a public records request to the Public Defender’s Office asking for 18 specific categories of documents. Mr. Anderies stated that 66 days later he received responses only to five of those items and six highly redacted emails making the response untimely. Mr. Anderies stated that

there was no response to the remaining 13 items because the Public Defender's Office cited privilege and attorney work product.

Tyler Vu, Information Manager, (Public Defender's Office) (Respondent), provided a summary of the department's position. Mr. Vu stated that though the Public Defender's Office is a public entity, they represent private individuals. Mr. Vu stated that in *Coronado Police Officers Assn. v. Steven J. Carrol, as Public Defender, et al.* stating that though the Public Defender's Office is public in nature, they regard the private individuals they defend the same as if that person were being represented by a private law firm and that those records are privileged. Mr. Vu stated that it is the position of the Public Defender's Office that the items collected by the PD's office were done so in the course of representing private individuals for use of those private clients later. Mr. Vu stated that the issues in *Coronado* address the same as those before the Committee in that those issues concern private individuals and are not disclosable. Mr. Vu stated that they did release records to the Petitioner that they believed were public in nature, however the records requested do not exist.

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

**Action: Moved by Member Wolfe, seconded by Member Hinze, to find that the SOTF has jurisdiction, find that the requested records are public and to refer the matter to the SOTF for hearing.**

Public Comment:

Michael Petrelis stated that he was in favor of the motion and that this is the first time that he has become aware of a complaint against the Public Defender's Office.

Anonymous provided the following summary of their public comment:

*'Comment is directed solely at the Task Force and is not legal advice.*

*SOTF should vigorously defend the rights of the clients of the Public Defender to attorney-client privilege, as it is those clients who hold the privilege, not the City.*

*However, it is inexcusable that the Public Defender claims it has never had a systematic process for timely response to public records requests. The Sunshine Ordinance is decades old.*

*The Respondents do not appear to have justified every redaction or withholding with "clear reference" to a statute or case law.*

*Complainant appears to have explicitly requested native electronic files, including .PST emails (which include all metadata/headers), and the consistency of the SOTF and City in handling this metadata request (vs mine) will be noted."*

**The motion PASSED by the following vote:**

Ayes: 3 – B. Wolfe, Hinze, LaHood

Noes: 0 - None

Member B. Wolfe stated that it would be pertinent for the Committee to remind the public and Respondents that Committees hear matters for jurisdiction, whether the records are public or not and to meet the 45-day rule. Member Wolfe stated that the arguments before Committees should be pertinent to that process. Member Wolfe stated that the process for determination happens when before the SOTF.

**Public Comment:**

Anonymous provided comment on Member Wolfe’s request and suggested that if that is all that hearings are required to establish, that possibly reviewing the complaint procedure is necessary. Anonymous suggested that if both parties submit briefs and materials, that parties would not have to appear at two or more hearings unless a party disputes jurisdiction.

9. **ADJOURNMENT**

There being no further business the meeting was adjourned at 6:30 p.m.

**APPROVED: 1/28/20**

**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.