



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

MINUTES - DRAFT

REMOTE REGULAR MEETING

**December 22, 2020
4:30 PM**

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

- 1. CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES; Shall the Compliance and Amendments Committee waive Complaint Procedure Rules to allow more than two complaints to be heard in the same meeting by the same complainant?**

Chair LaHood called the meeting to order at 4:43 p.m. On the call of the roll Chair Hinze and Members Wolfe and Wong were noted present. A quorum was present.

There were no agenda changes.

Chair LaHood opened the meeting by addressing the management of the matters scheduled for the hearing and that each matter was filed by the same Petitioner. Chair LaHood noted that the SOTF has a two complaint per petitioner rule however the management of that rule would be adjusted for today's hearing.

No action taken.

Public Comment:

Anonymous noted that his complaints will be heard today and that they are related SB 1421.

- 2. Approval of the November 24, 2020, Compliance and Amendments Committee meeting minutes.**

Action: Moved by Member Wong, seconded by Chair LaHood to approve the November 24, 2020, meeting minutes.

Public Comment:

Anonymous stated that the November 24, 2020 Compliance and Amendments Committee audio was not uploaded. Anonymous also stated approval of the October 27, 2020, Minutes was necessary.

The motion PASSED by the following vote:

Ayes: 3 - Wong, LaHood, 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 noted that Member Schmidt mentioned a new ruling of the Supreme Court that redaction is not a creation of a file and is a fantastic ruling.

Anonymous stated that this ruling applies much broader than the SOTF has ruled. Anonymous also stated that Public Works has not released any documents which reflects how they treat members of the public.

4. **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 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 to provide written justification for withholding.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that nothing was produced until he filed a complaint. Anonymous stated that the response was not provided timely and was unlawful. Anonymous noted that the Police Department has accepted responsibility and usually provides a log of redactions however, he has no idea why redactions were made. Anonymous noted that the Police Department needs to give clear references.

Lt. R. Andrew Cox (Police Department) (Respondent), provided a summary of the department's position. Lt. Cox stated that this case is over a year old. Lt. Cox stated that the Police Department took responsibility and that this is an old case which the Petitioner had sent to an old email. Lt. Cox noted that they did not respond timely to the request as an IDR and accepts responsibility. Lt Cox addressed the redactions as early in the process, the department experienced many growing pains and with the SB1421 unit and the correct redactions will be issued to the Petitioner.

Action: Moved by Member Wolfe, seconded by Member Wong, 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 - Wolfe, Wong, LaHood
Noes: 0 - None

5. **File No. 19144:** Complaint filed by Anonymous against the Department of Police Accountability, Paul Henderson, Diana Rosenstein, Stephanie Wargo-Wilson, and Mary Polk for allegedly violating Administrative Code (Sunshine Ordinance), Sections, 67.21, 67.24, 67.26 and 67.27, by failing to respond to a public records request in a timely and/or complete manner, failing to assist in a timely or complete manner, failing to cite lawful justification for exemption, failing to key redactions by footnotes or other clear references to justifications, and failing to withhold the minimal portion of records.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that the response was untimely and without written justification for withholdings. Anonymous stated that there are no keys by footnote and the Respondent did not produce audio nor video records. Anonymous stated that the Respondent is willing to provide a transcript instead of a body cam footage with redactions. Anonymous stated that the requested records are public.

Newton Oldfather (Department of Police Accountability) (Respondent), provided a summary of the department's position. Mr. Oldfather stated that he understands that the purpose of this hearing is for jurisdiction. Mr. Oldfather stated that the Petitioner wanted files in officer involved shootings. Mr. Oldfather stated that the Department has provided 20,000 pages to the requestor and will make themselves available to Anonymous to discuss the redactions he has not accepted. Mr. Oldfather stated that the Department will identify video and audio recording and provide at no cost to Anonymous.

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

Action: Moved by Member Wolfe, seconded by Member Wong, 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 - Wolfe, Wong, Hinze

Noes: 0 - None

6. **File No. 20066:** Complaint filed by Anonymous against the Police Commission for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(b) incomplete response; 67.24(i) citation of unlawful public-interest balancing test; 67.26 nonminimal withholding; 67.27 failure to cite a specific provision of law for justification.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that this is regarding his request for audio records and involves the personnel matters of police officers under SB1421. Anonymous stated that comments by police officers can be redacted and justified. Anonymous stated that the Police Department should cite only what they are using and what actually applies. Anonymous stated that his request is for audio recordings under Penal Code 832.7(b)(6).

Sgt. Stacy Youngblood (Department of Police Accountability) (Respondent), provided a summary of the department's position. Sgt. Youngblood stated that he did cite that particular portion in error and that a performance evaluation is not an SB1421 document. Sgt. Youngblood stated that the Chief's evaluation is a personnel matter and can be obtained by court order.

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

Action: Moved by Member Wolfe, seconded by Member Wong, 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 - Wolfe, Wong, Hinze

Noes: 0 - None

7. **File No. 20074:** Complaint filed by Anonymous against Dennis Herrera, Elizabeth Coolbrith, and the Office of the City Attorney for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(b) incomplete response to public records request and 67.21(c) failure to provide written statement as to the existence, quantity, form and nature of records.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that the response from the City

Attorney is acceptable because the response was detailed. Anonymous noted that not all records received are responsive. Anonymous stated that the California Public Records Act requires a review of all records that are exempt and to minimally redact portions. Anonymous argued that City Attorneys copies of body cams and police reports are not privileged.

John Cote (City Attorney's Office) (Respondent), provided a summary of the department's position. Mr. Cote stated that he sent a detailed written response to the SOTF on this issue and asked that the Committee refer to that response.

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

Action: Moved by Member Wolfe, seconded by Member Wong, find that the SOTF has jurisdiction, find that the requested records are public and to refer the matter to the SOTF for hearing with the request that SOTF Deputy City Attorney provided an analysis for clarification.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 3 - Wolfe, Wong, Hinze

Noes: 0 - None

8. **File No. 20110:** Complaint filed by Anonymous against Sheriff Paul Miyamoto, Alison Lambert and the Sheriff's Department for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21 by failing to respond to a records request in a timely and/or complete manner, 67.26 by failing to keep withholding to a minimum and 67.27 failing to justify withholding.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that he doesn't believe there is a written response to this case on behalf of the Sheriff's Dept. Anonymous stated that the Sheriff's Department did not provide audio or video records due to their claim that the request is burdensome. Anonymous also noted the Respondent did not provide footnotes on audio or video records. Anonymous stated that these are public records and the Sheriff's Department admits this because they disclosed them.

Paul Miyamoto (Sheriff's Department) (Respondent) was not present for the hearing and did not inform the SOTF Administrator their unavailability.

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

Action: Moved by Member Wolfe, seconded by Member Wong, 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 - Wolfe, Wong, Hinze

Noes: 0 - None

9. **Effect/Application of the Sunshine Ordinance on Government Social Media Accounts.**

Member Wong put together this presentation because the public is blocked by government social media. Member Wong began with the first slide dealing with the question can Twitter accounts block users? Member Wong stated that the link is evidence of San Francisco Police Dept. Park Station blocking a member of the public and did a bit of research on existing case law. Member Wong stated that on page 5 of pdf first pieces of case law the *Knight Institute v. Trump*, both has the complaint made as well as analysis and provided a description of each slide. Member Wong noted the case of *Davidson v. Randall* who was county Board of Supervisors member and the case found in favor of member of the public. Member Wong stated that she wanted to determine if SFPD was providing the same information as provided by social media. Member Wong believes that these government accounts should not be blocked by government agencies and that Twitter accounts should be made available to all San Francisco citizens. San Francisco Police Department has a social media policy blocking social media accounts. Member Wong noted that on page 16 of the pdf Administrative Code, Sunshine Ordinance 67.29 can be loosely applied and provided on social media. Member Wong asked how do we apply Sunshine when blocking social media and how does the committee decide if information should be available on social media accounts?

Member Wolfe asked where the information is posted how can comments be made available? Member Wolfe noted that Member Wong is making the argument that there is more recent information and that clearly there is a difference of implementation. Member Wolfe stated that this was all stemmed from a person being blocked for a long time.

Member Wong stated that many arguments provide that social media accounts should be made available and that existing case law has found.

Chair LaHood suggest that this topic be presented to the SOTF.

Public Comment:

Anonymous stated thanks to Member Wong for her presentation because SOTF is all volunteers and topics related to Sunshine are important to members of the public. Anonymous added that *Knight First Amendment v. Trump* court has held that Twitter and Facebook, as private companies, do not have to comply with the laws, however public officials including, President Trump and the SFPD, must.

No action taken.

10. **Discussion regarding compliance with Administrative Code Sec 67.21(f).**

Member Wolfe opened the discussion noting that the Sunshine Ordinance offers little authority for the SOTF to enforce the Ordinance except in certain cases including in 67.21(e) matters. Member Wolfe stated that the SOTF has become familiar with its ability to make referrals for noncompliance to Ethics Commission, the District Attorney and Attorney General. Member Wolfe stated that members of the public are free to take their cases to the judicial branch. Member Wolfe emphasized that outlined in 67.21(f); so how does that get implemented? Member Wolfe asked if those matters should get sent to the Superior Court as part of their regular business or does the SOTF have to do something? Member Wolfe noted that there is nothing operational to it. Member Wolfe also asked with regards to the Compliance and Amendments Committee whether this is another avenue for compliance?

Chair LaHood asked in terms of who is responsible, when an Order of Determination is issued, are they responsible for ensuring compliance?

Member Wolfe stated that once an Order of Determination is made it is sent to the complainant and respondent. Member Wolfe stated that if something were to come up regarding noncompliance it would be scheduled on the Compliance and Amendments Committee (CAC) agenda. Member Wolfe doesn't recall prior to 2012-2014 if the CAC was actively monitoring. Member Wolfe noted that this is how it is supposed to proceed, or should the procedure be review or changed?

Chair LaHood moved to amend the Ordinance to say that responsive records also must be sent to SOTF within five business days or are we saying records need to be sent to CAC as well and the petitioner who also needs to tell us if documents have been received and is the request now satisfied.

Member Wolfe opined that he needs to try to contact the framers of Ordinance and ask what they had in mind when they came up with Order of Determination. Member Wolfe asked what is the commonly construction of language of what this actually means? Have done this with other sections of the Ordinance.

Chair LaHood noted that this issue should be addressed at Orientation.

Member Wolfe recommended that when there is a violation of the Order of Determination that not only does it get sent to both parties and is posted on the website and it should also be sent to the Presiding Judge of the Superior Court.

Action: Moved by Chair LaHood, second by Member Wolfe that the Compliance and Amendments Committee recommends to the SOTF add to the process to forward Orders of Determination to the Petitioner, Respondent and Presiding Judge of the Superior Court, that all parties are informed that when Orders of Determination are issued, that documents need to be delivered by the Respondent to the Petitioner and the SOTF under Administrative Code, Sunshine Ordinance 67.21(e) within five business days or delivered within the agreed upon delivery schedule, and that the Petitioner inform the SOTF if the records are not responsive to the Order of Determination. The Compliance and Amendments Committee recommends that any new procedures shall be referenced and updated in the SOTF Complaint Procedures.

Public Comment:

Agenda Item 10 - SOTF Court enforcement of ODs under 67.21(f) - 146 words written comment:

As one of many persons who has had their Orders of Determination ignored by the City, I think this is a great idea!

1. The 5-day deadline is set by law 67.21(e) and cannot be changed by your rules.
2. Please explicitly state at the end of every motion for violation at the full Task Force that you order City to comply under 67.21(e).
3. Instead of referring every OD to the Superior Court under 67.21(f), consider sending only those where compliance has not occurred in 5 days.
4. Please add more detail regarding reasoning for your ODs so that it creates a more solid administrative record for the court reviewing your decision. For example, instead of just “failing to keep withholding to a minimum” you could say “withholding in entirety future calendar entries instead of redacting them minimally”.

The motion PASSED by the following vote:

Ayes: 3 - LaHood, Wolfe, Wong

Noes: 0 - None

11. Announcements, Comments, Questions, and Future Agenda Items by Member of the Compliance and Amendments Committee.

Member Wolfe opined that because some of these cases do not have legal memos it will be hard for SOTF to figure out what is going on and pondered if the Committee might have to do some written summaries on their own. Member Wolfe asked the Committee members to provide brief synopses of the cases heard because legal memos are no longer provided by the City Attorney’s Office.

Chair LaHood stated that this is a good suggestion and will help makes things move along more quickly with SOTF. Chair LaHood stated that this will make sure the committee is conveying what the SOTF needs.

Public Comment:

Anonymous suggested that when planning out future Committee agendas, for the sake of fairness that we hear other complaints from 2019.

There being no further business the meeting was adjourned at 7:51 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.