



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

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

November 14, 2016 - 4:00 PM

Regular Meeting

Members: Frank Cannata (Chair) Chris Hyland, and Dave Maass

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

Chair Frank Cannata called the meeting to order at 4:05 p.m. On the call of the roll Members Cannata, Hyland and Maass were noted present.

There were no agenda changes.

2. Approval of the September 12, 2016, Compliance and Amendments Committee meeting minutes.

The Committee discussed the minutes.

Member Maass, seconded by Member Hyland, moved to approve the September 12, 2016, meeting minutes.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 3 - Hyland, Maass, Cannata

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:

Ray Hartz provide a history of his previous order of determinations against various city departments and their compliance with the requirement to place 150 word written summaries in meeting minutes.

4. **File No. 16053: Hearing on the Status of the Order of Determination -** Complaint filed by Joel Ekno against Officer Candy Hilder and the Police Department for violating Administrative Code (Sunshine Ordinance), Sections 67.21 (a)(b)(c) and (e), by failing to provide public records without unreasonable delay; failing to provide public records within 10 days or justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt; failing to assist a requester in identifying the existence, form and nature of any records or information maintain or assist a requester in directing a request to the proper office or staff person; and failing to send an authorized representative of the custodian of the public record able to explain the basis for the decision to withhold the records requested.

(On August 3, 2016, the SOTF heard and referred the matter to the Compliance and Amendments Committee. It was requested that that Officer Anderson (Star #835), Officer Candy Hilder, and Lt. Kathryn Waaland attend the meeting to explain why the requested records cannot be provided and/or provide the requested records (Police Report No. 160094640). In addition, please provide information as to the reason for the one month delay in responding to the records request (Records requested on February 8, 2016, and February 25, 2016. Denial of request for records not provided until March 29, 2016)).

Lt. Kathryn Waaland, Police Department (Respondent), provided an update on the complaint and stated that the request Police Report was provided to the Complainant on November 8, 2016. Joel Ekno (Complainant) was notified of the hearing but did not attend the meeting or communicate with the Task Force.

Member Hyland, seconded by Member Maass, moved to continue the matter to the call of the chair with the provision that the Task Force Administrator shall communicate with Joel Ekno (Complainant) to inquire as to whether or not the requested Police Report was provide. Upon confirming with the Complainant that the requested Police Report was provided and compliance with the Order of Determination the complaint will be closed. If a response is not received from the Complainant within 45 days of transmittal the complaint will be closed.

Public Comment:

Ray Hartz provided clarifying information on similar complaint situations.

The motion PASSED by the following vote:

Ayes: 3 - Hyland, Maass, Cannata
Noes: 0 - None

5. **File No. 16063: Hearing on the Status of the Order of Determination** - Complaint filed by Michael Petrelis against Supervisor Scott Wiener, Board of Supervisors, for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.25 (a), by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

(On October 5, 2016, the SOTF heard and referred the matter to the Compliance and Amendments Committee. It was requested that the Respondent provide the remainder of the requested records and/or provide an estimate of the time needed to comply with the remainder of the public records request.)

Neither the Complainant nor the Respondent were present at the hearing. The Committee discussed the status of the complaint. .

Member Hyland, seconded by Member Maass, moved to continue the matter to the call of the chair with the provision that the Task Force Administrator shall communicate with Michael Petrelis (Complainant) to inquire as to whether or not the requested records were provide. Upon confirming with the Complainant that the requested records were provided and compliance with the Order of Determination the complaint will be closed. If a response is not received from the Complainant within 45 days of transmittal the complaint will be closed.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 3 - Hyland, Maass, Cannata
Noes: 0 - None

SPECIAL ORDER – The hearings on File No. 16088 and 16089 will not begin earlier than 4:30 p.m.

*The Compliance and Amendments Committee shall hold hearing(s) on File No. 16088 and 16089 to: 1) determine if the Sunshine Ordinance Task Force (Task Force) has jurisdiction; 2) review the merits of the complaints; and/or 3) issue a report and/or recommendation to the Task Force. The Complainant and Respondent may attend to provide clarification, evidence and related testimony. However, attendance by the Complainant and Respondent is **not required** at the November 14, 2016, Compliance and Amendments Committee meeting.*

The Task Force, upon receipt of the report and/or recommendation from the Committee, shall schedule and conduct a hearing on the merits of the complaint. The Complaint and

Respondent will be required to attend the Task Force meeting to review the merits of the complaint(s).

The Committee discussed to possibility of hearing Item No. 6 and 7 together but heard the matters separately.

6. **File No. 16088:** Complaint filed by Ray Hartz against Angela Calvillo, Clerk of the Board of Supervisors, for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.16, by failing to place a written summary of the public comment, if no more than 150 words, in the minutes (September 6, 2016). (*attachment*)

Member Hyland, seconded by Member Maass, moved to find jurisdiction.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 3 - Hyland, Maass, Cannata

Noes: 0 - None

Ray Hartz (Complainant) provided a summary of the complaint and requested the Committee to find violations. Mr. Hartz provided a summary of previous Task Force Order of Determinations regarding the 150 word written summary in the minutes and stated that a legal opinion has never been provided regarding the matter. Wilson Ng, Office of the Clerk of the Board (Respondent), provided a summary of the department's position. Mr. Ng stated that the 150 word summary is inserted into the meeting minutes as part of the Addendum. Mr. Ng stated that the 150 word summary is placed into the Addendum after the signature of the Clerk of the Board because the Clerk of the Board cannot verify summaries submitted for inclusion into the meetings by members of the public. In addition, Mr. Ng stated that the Task Force has previously ruled both in favor and against the Clerk of the Board in regards to the requirements for placement of the 150 word summary and that the Ethics Commission has previous ruled that the placement of the 150 word summary in an Addendum does not violate the Sunshine Ordinance. Mr. Ng suggested that the Task Force seek administrative remedy with a third party, such as the Ethics Commission or the City Attorney, in order to set a precedence regarding the matter. A question and answer period followed. The Complaint and the Respondent were provided the opportunity for rebuttals.

Member Maass, seconded by Member Hyland, moved to refer the matter to the Task Force without recommendation for hearing.

In regards to the placement of the 150 word written summary provided by members of the public into meeting meetings the Committee would like to bring it to the attention of the Task Force that the Task Force has previously provided conflicting rulings on the matter; that the Ethics Commission has previously rules against the findings of the Task

Force that the summary should not be placed into an Addendum, and that many other city departments who have previously been found in violation now place the 150 word written summary into the body of minutes. The Committee would like to forward the suggestion that the Task Force seek administrative remedy with a third party in order to set precedence for future Task Force decision.

The Committee invites Angela Calvillo, Clerk of the Board, to attend the Task Force meeting to provide detailed justification for her position on the matter.

The Committee requested the Task Force Administrator to include a summary of the follow decisions regarding the 150 word written summary:

Task Force Order of Determination
10054, 11054, 11070, 11088, 11098, 12049, 12050, 13054, 13055 and 13059

Ethics Commissions Decisions
1302251 and 13062402

Upon approved of the Task Force Chair the matter shall be scheduled for hearing before the Task Force on December 7, 2016.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 3 - Hyland, Maass, Cannata
Noes: 0 - None

7. **File No. 16089:** Complaint filed by Ray Hartz against Angela Calvillo, Clerk of the Board of Supervisors, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.16 and 67.34, by willfully failing to place a written summary of the public comment, if no more than 150 words, in the minutes (September 20, 2016). (*attachment*)

Member Hyland, seconded by Member Maass, moved to find jurisdiction.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 3 - Hyland, Maass, Cannata
Noes: 0 - None

Ray Hartz (Complainant) provided a summary of the complaint and requested the Committee to find violations. Mr. Hartz stated that the arguments regarding the complaint are similar to those provided in the previous hearing regarding File No. 16088. Wilson Ng, Office of the Clerk of the Board (Respondent), provided a summary of the department's position. Mr. Ng stated that in addition to the summary provided in File NO. 16088. A question and answer period followed. The Complaint and the Respondent were provided the opportunity for rebuttals.

Member Maass, seconded by Member Hyland, moved to refer the matter to the Task Force without recommendation for hearing.

In regards to the placement of the 150 word written summary provided by members of the public into meeting minutes, the Committee would like to bring it to the attention of the Task Force that the Task Force has previously provided conflicting rulings on the matter; that the Ethics Commission has previously rules against the findings of the Task Force that the summary should not be placed into an Addendum, and that many other city departments who have previously been found in violation now place the 150 word written summary into the body of minutes. The Committee would like to forward the suggestion that the Task Force seek administrative remedy with a third party in order to set precedence for future Task Force decision. In addition, a definition of the requirement which states that the 150 written summary shall be inserting 'in the minutes' should be reviewed.

The Committee invites Angela Calvillo, Clerk of the Board, to attend the Task Force meeting to provide detailed justification for her position on the matter.

The Committee requested the Task Force Administrator to include a summary of the follow decisions regarding the 150 word written summary:

Task Force Order of Determination
10054, 11054, 11070, 11088, 11098, 12049, 12050, 13054, 13055 and 13059

Ethics Commissions Decisions
1302251 and 13062402

Upon approved of the Task Force Chair the matter shall be scheduled for hearing before the Task Force on December 7, 2016.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 3 - Hyland, Maass, Cannata
Noes: 0 - None

8. **Announcements, Comments, Questions, Future Agenda Items, and Pending Calendar by Members of the Committee.** *(Discussion and Action)*

The following items are pending before the Compliance and Amendments Committee and will be scheduled on a future date.

- **File No. 14101: Order of Determination** - Grossman v. Dept. of Building Inspection. *(Pending update on completion of program implementation)*
- **File No. 16103: Report:** Use of automatic ‘out-of-office’ email responses and its effect on public records requests. (Reliability, Timeliness and Possible Problems)
- **File No. 16081: Report:** City and County of San Francisco’ compliance with Senate Bill 272 (Amendment to the California Public Records Act regarding open source database and summaries and requirement for online maintenance.
- **File No. 16071: Order of Determination** – Tom Borden v. Planning Department.

Task Force Administrator Young provided a summary of the issues pending before the Committee.

Public Comment:

Ray Hartz commented on the long delays for the Task Force to conduct hearing on complaints and stated that departments must provide timely responses even if certain members of staff is not in the office.

No actions taken.

9. **ADJOURNMENT**

There being no further business the meeting was adjourned at 5:39 p.m.

APPROVED: DRAFT
Compliance and Amendment 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.