

**SUNSHINE ORDINANCE
TASK FORCE**

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ORDER OF DETERMINATION
March 2, 2018

DATE ISSUED
January 16, 2018

CASE TITLE – Marvin Lambert v. Planning Department (File No. 17112)

FACTS OF THE CASE

The following petition/complaint was filed with the Sunshine Ordinance Task Force (SOTF):

File No. 17112: Complaint filed by Marvin Lambert against the Planning Department for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a public records request in a timely and complete manner.

HEARING ON THE COMPLAINT

On November 13, 2017, The Compliance and Amendments Committee (Committee) acting in its capacity to hear petitions/complaints heard the matter and referred it to the SOTF for hearing.

Marvin Lambert (Petitioner) provided a summary of his complaint and requested the Committee to find violations. Mr. Lambert stated that the Planning Department has no basis to invoke attorney client privileges. Mr. Lambert provided a list of circumstance where withholding of records is allowed and stated that the Planning Department has not met the criteria for withholding records. There were no speakers in support of the Petitioner. Christine Silva (Respondent) provided a summary of the department's position. Ms. Silva stated that a response was provided on the same day the public records requested was received. Ms. Silva stated that attorney client communications and work product does not need to be disclosed pursuant to California Government Code Sections 6254(k) and 6276.04. Ms. Silva stated that privileged communications was accidentally provided to the Petitioner and that the Planning Department requested that Mr. Lambert destroy privileged information that were provided accidentally. There were no speakers on behalf of the Respondent. A question and answer period occurred. The Petitioner and Respondent were provided an opportunity for rebuttals.

On January 16, 2018, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

Marvin Lambert (Petitioner), provided a summary of the complaint and requested the SOTF to find violation. Mr. Lambert stated that the Planning Department incorrectly invoked Attorney Client Privilege to justify withholding of records and that records should be provided in a redacted format. There were no speakers in support of the Petitioner. Christine Silva, Planning Department (Respondent), provided a summary of the department's position. Ms. Silva stated that communications between the Planning Department staff and their assigned deputy city attorney was withheld pursuant to Attorney Client Privilege. Ms. Silva stated that certain privileged documents were accidentally provided and that it was requested that the protected documents be destroyed. There were no speakers on behalf of the Respondents. A question and answer period followed. The parties were provided an opportunity for rebuttal.

Deputy City Attorney Colla commented on the matter and responded to questions from the SOTF. DCA Colla stated that in court procedures it is normal to request that protected documents be destroyed if they were accidentally provided.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the SOTF did not find violations of Administrative Code (Sunshine Ordinance), Section 67.21.

ORDER OF DETERMINATION

Member Hinze, seconded by Member Cannata, moved to find that the Planning Department did not violate Administrative Code (Sunshine Ordinance), Section 67.21.

The motion PASSED by the following vote:

Ayes: 6 – Eldon, Maass, Cannata, Fischer, Hyland, Hinze
Noes: 1 – B. Wolfe
Absent: 2 – Chopra, J. Wolf
Excused: 1 – Tesfai


Bruce Wolfe, Chair
Sunshine Ordinance Task Force

- c. Marvin Lambert (Petitioner/Complainant)
Christine Silva, Planning Department (Respondent)