

# **Systemic Problems with the Application of the San Francisco Sunshine Ordinance, the California Public Records Act and The Brown Act in the City and County of San Francisco**

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# **Systemic Problems with the Application of the San Francisco Sunshine Ordinance, the California Public Records Act and The Brown Act in the City and County of San Francisco**

The San Francisco Sunshine Ordinance was enacted in 1993 by the Board of Supervisors and later amended in 1999 by the voters. The purpose was to further the rights of the people to access of public records and public meetings of the City and County of San Francisco and other government entities or government created entities and organizations that received government money and operated on behalf of the city of San Francisco. Overtime, if not zealously guarded, these rights to public access are degraded by government officials for either political or unethical reasons. This is actually noted in the **San Francisco Sunshine Ordinance, Section 67.1 (c)**:

“Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy.”

This complaint will go into systemic issues in the application of the San Francisco Sunshine Ordinance, California Public Record Act (CPRA), and The Brown Act have degraded over time in the City and County of San Francisco. With diminished rights of the public to access government information and actions, there is less transparency and accountability. This leads to scandals and skating close to the line of laws that would likely not happen under full transparency. When any oversight committee is degraded or compromised, it becomes a shield for the city and public officials. The compromised commissions become a superficial veil of accountability.

Quasi-judicial bodies, like the Sunshine Ordinance Task Force (SOTF) create another hurdle for the public if they eventually need to get relief from a court. Even though the San Francisco Sunshine Ordinance has a provision allowing the public to go directly to court (**San Francisco Administrative Code, Section 67. 21 (f)**) has not been tested), courts require a petitioner to exhaust all administrative avenues before seeking judicial review. (**Cal. Civ. Proc. Code § 1094.5(a)**). Complaints to SOTF can take years to go fully through the process. SOTF determinations are routinely slow-walked or ignored by city employees. A detrimental determination by SOTF adds time and confusion to meeting violations that happened a year ago or records that should have been produced in 10 days. Other public access laws that San Francisco must follow if they provide greater requirements than the San Francisco Sunshine

Ordinance include the California Public Record Act (CPRA), The Brown Act, and **San Francisco Administrative Code 12 L**.

The San Francisco Sunshine Ordinance is written in a way as to be a customer service guide for city officials and employees, with little required by the public. This may be why the San Francisco City Attorney's Office calls their pamphlet on the San Francisco Sunshine Ordinance, the CPRA, and The Brown Act as the Good Government Guide. Because the ordinance and other public access laws are written about what a government official or entity should or should not do for the public to gain access to information or meetings, there is very little leverage written for the public.

“The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy” is written in **San Francisco Administrative Code, Section 67.1. Finding and Purpose**.

It is important to understand that in the State of California, all government records and information are considered public unless there is a specific exemption in law that can be applied. City officials or government entity have the burden to show that records or information are not public.

California Constitution, the courts, and the Sunshine Ordinance instruct public access laws to be interpret broadly in favor of public access. **CA Constitution Article 1, Section 3 (b) (2)**:

“A statute, court rule, or other authority, shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access.”

“Where terms are ambiguous, the constitutional canon requires an interpretation that maximizes the public’s right of access unless the Legislature has expressly provided to the contrary.” *Sierra Club v. Superior Court* (2013)

“In other words, all public records are subject to disclosure unless the Legislature has expressly provided to the contrary.” *Williams v. Superior Court* (1993)

"Civil statutes for the protection of the public are, generally, broadly construed in favor of that protective purpose" *Lungren v. Superior Court* (1996)

The SOTF are city officials and are a local agency and part of the local agency, the city. If SOTF members vote against a broad interpretation of a public access provision, then they are required to cite a specific provision of a statute that provides to the contrary or is a specific exemption. Unfortunately, the current SOTF routinely reads public access laws narrowly. It often does not cite a specific provision of a statute that provides to the contrary or is a specific exemption when denying that records are public or access to public meetings. The SOTF does not follow the complaint provision in the San Francisco Sunshine Ordinance (**San Francisco Administrative**

**Code, Section 67.21 (e)).** The SOTF confuses the San Francisco Sunshine Ordinance as the be in be all of public access laws when the ordinance is only meant to be additional public access requirements of public access laws and is often lacking in stronger language than the state public access laws. The city of San Francisco has imposed its 6-vote minimum in the affirmative regardless of the quorum or seat vacancy. This 6-vote majority requirement in the affirmative is applied to disadvantage members of the public complaints and advantage the city or city official's position to withhold records. The Ethics Commission has failed to fully implement its obligation of enforcement written in the **San Francisco Administrative Code, Section 67.35 (d).** The city inappropriately stopped SOTF from determining the Ethics Commission obligation under the **San Francisco Administrative Code, Section 67.35 (d).** The SOTF allowed this.

This petitioner will go into detail and give examples of each complaint above and other complaints. Because the SOTF does not adhere to all provisions of the San Francisco Sunshine Ordinance and California public access laws and the city imposes requirements on the SOTF that favors the city, this leads to a ripple effect of public access laws not being followed by city officials in San Francisco. While not the focus of this complaint, there will be specific examples of how city officials have not followed public access laws to reinforce points of systemic problems.

The **San Francisco Sunshine Ordinance** is all of Chapter 67 in San Francisco Administrative Code and will also be referred to as **San Francisco Administrative Code, Section 67.xx** with the xx being the section number.

The Sunshine Ordinance Task Force in this complaint is written as the SOTF.

All San Francisco Government SOTF Audio:

[https://sanfrancisco.granicus.com/ViewPublisher.php?view\\_id=95](https://sanfrancisco.granicus.com/ViewPublisher.php?view_id=95)

Note all full SOTF meetings and the SOTF committees meeting audio can be found here:

<https://www.youtube.com/@sfneighborhoods> The advantage is that there is Google auto transcript and time stamps that allow you to find and jump to certain points of the audio quickly. The how to is explained in each YouTube audio description with the auto transcript button at the bottom.

This complaint will refer to Exhibit X that are located at the end of this grand jury compliant. Records cited in this complaint that are not exhibits are given links to download primarily from the San Francisco city website and news media websites. This is to cut down on this pile of paper printed and submitted. All documents can be provided and or a digital copy of this complaint with clickable links by contacting this petitioner.

**The Sunshine Ordinance Task Force complaint process takes an average of 407 days to resolve a complaint (2023 SOTF Annual Report) when the San Francisco Sunshine Ordinance Administrative Code, Section 67.21 (e) mandates at least in 45 days.**

From the **2023 SOTF Annual Report**

([https://www.sfgov.org/sunshine/sites/default/files/2023\\_Annual\\_Report\\_FINAL\\_20240410.pdf](https://www.sfgov.org/sunshine/sites/default/files/2023_Annual_Report_FINAL_20240410.pdf))

“The SOTF took an average of 407 days to resolve complaints, far longer than the 45 days mandated by the Ordinance for the SOTF to issue a determination for alleged violations of the San Francisco Administrative Code 67.21(b). Complaints were scheduled for Task Force hearings an average of 2.5 times before resolution.

The SOTF continues to have a significant backlog of complaints and to receive twice as many complaints as it can resolve yearly under current procedures.” **(2023 SOTF Annual Report)**

**San Francisco Administrative Code, Section 67.21 (e)** “If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request.”

**San Francisco Administrative Code, Section 67.21 (e)** uses the word “shall”. “The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received” Shall is must comply. The SOTF’s current complaint procedures do not allow them to comply in 45 days. Recently at a SOTF meeting, members deliberating on this issue have recognized that the “shall” and the no greater than 45 days, but they have made little attempt to comply with the provision.

From the 2023 SOTF Annual Report, “Because only the full SOTF can make definitive determinations at present, we focused exclusively on cases that were scheduled for hearing before the full SOTF.” The San Francisco Sunshine Ordinance does not state this requirement. It states **San Francisco Administrative Code, Section 67.21 (e)**” Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial.” The record request denial could come from the SOTF or a continued denial by the city after trying to resolve issues outside a hearing. The San Francisco Sunshine Ordinance does not

require a determination made by the full SOTF. This appears to be a city requirement by forcing a majority 6 votes in the affirmative on substantive matters. This “requirement” is a partially to blame for SOTF failing to make determinations in 45 days of petition. The city's requirement of a 6 votes in the affirmative on all actions/determinations is complex and will be discussed under its own topic.

Some suggestions for how SOTF complaints could handle outside a hearing requirement when there is no record request denial by SOTF determination are in **Exhibit B**. One suggestion is that a member of SOTF write an opinion and other members of SOTF sign on to it. A majority sign on to the opinion it is a SOTF determination. There can be dissenting opinions which would clearly cite law why the records are exempt. If the SOTF opinion upholds the respondents, record request denial, then there could be a SOTF hearing.

SOTF’s structure of committees and how complaints have been handled have changed little over the years (at least since 2002, probably since 1999 or 1993?) with one notable exception. (SOTF Complaint Procedures: [https://sfgov.org/sunshine/sites/default/files/Complaint\\_Procedure.pdf](https://sfgov.org/sunshine/sites/default/files/Complaint_Procedure.pdf)). The exception is that the SOTF Administrator and the Deputy City Attorney used to work to obtain “information to which a petitioner is legally entitled” and if this effort failed, the complaint was passed on to the SOTF. This happened from 2003 to 2008 but could have started before 2003 as there are no public SOTF Annual Reports before 2003. From 2009 to 2016, it appears to be only the SOTF Administrator trying to resolve complaints before they went to the SOTF. Since there are no annual reports from 2016 until 2022, it is unknown when the SOTF Administrator stopped trying to resolve complaints before they went to the SOTF. This petitioner started being active with complaints to the SOTF in 2018, just when a new SOTF Administrator started. This petitioner saw no concerted effort by the SOTF Administrator(s) to resolve complaints to the present, but the SOTF Administrator was most likely over worked. Recently, a second SOTF Administrator has been added.

**Exhibit A** is SOTF Annual Report Links and quotes from Rate of Resolution of Public Access Conflicts.

The 2012-2014 Annual Report is the first time SOTF notes “the sheer volume of complaints filed with the Task Force” as their biggest issue. The issue seems to have persisted from that time till now.

The current SOTF has made small efforts like a consent calendar (“The consent calendar allows the full Task Force to make determinations on straightforward cases, or those in which the City does not contest alleged violations, on the recommendation of a committee.” **2023 SOTF Annual Report**). Member Schmidt has tried to put forward more substantive measures, but most have failed to gain traction. (**Exhibit B**, February 15, 2022 Schmidt’s attempt based on



Anonymous and Sullivan's suggestions, which are included in full at the end) SOTF Member Schmidt tried again at the March 6, 2024, full SOTF meeting, agenda item 5, SOTF complaint File No. 23097 resulting at the SOTF, April 4, 2024 meeting, agenda item 5, a change to the SOTF by-laws "The Complaint Committee shall schedule priority review for 67.21 claims.." The **San Francisco Administrative Code, Section 67.21** claims are record and information request violations. This has done little and put other every other public access law to government complaint violations like meeting violations as less of a priority.

The SOTF has implemented that once they get a complaint; they send the city official/agency respondent a letter and form asking them for their position before hearings. The SOTF Annual Report does not track compliance, but from observation, it appears to be very low. This would speed up the determination if the city respondent would clearly state the public access provisions they are basing their actions on. This respondent letter and form request is a public information request by SOTF. The non response by a government agency or official is a violation of the CPRA and the SF Sunshine Ordinance (**San Francisco Administrative Code, Section 67.21 (b))**). Furthermore, **San Francisco Administrative Code, Section 67.27** requires "Any withholding of information shall be justified, **in writing**, as follows:" Also **CPRA § 7922** "An agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this division, or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record" **CPRA § 7922.54 (a)** "A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing."

The SOTF seems entrenched in its current procedures and unable and unwilling to comply with the ordinance that created them and is supposed to get city agencies to comply with. The SOTF complaint procedures with the requirement of almost every complaint be heard in a subcommittee and then a full hearing of the SOTF make it impossible for the SOTF to comply with the San Francisco Sunshine Ordinance. None of this procedure is required in the San Francisco Sunshine Ordinance, which will be explained later in various sections of this complaint. The SOTF should put the requirements of the San Francisco Sunshine Ordinance before their bylaws and procedures.

Nothing in the San Francisco Sunshine Ordinance requires the current SOTF committee structure and SOTF complaint procedures nor place it above the time requirement for a determination on a complaint.

SOTF Member Wolfe suggested that SOTF members participate in assisting people in gaining public records. This would probably be a better use of their time than the complaint hearing committee structure before a SOTF hearing. This petitioner has suggested doing away with the

compliant committee as a step to determine jurisdiction. This will be explained later in this complaint.

This petitioner has suggested that SOTF could become a party to public record request that are problematic. When the SOTF asks a respondent to respond to a complaint, the SOTF has essentially become a party to the complaint. The whole point is making public records and meetings available to the public. The SOTF can determine outside of a hearing process if the record request is a violation of timeliness of notification and producing records or a withholding based on exemption in law that is disputed. The SOTF should push for clear citation of the exemption(s) being used to withhold record. It is only a dispute about an exemption or denial that SOTF may hold a public hearing determination where requested by the petitioner. **San Francisco Administrative Code, Section 67.21 (e)** "Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial." All other delays could be sent for enforcement. Enforcement discussed later.

The SOTF needs to rewrite its complaint procedures and by-laws (The SOTF By-laws: [https://sfgov.org/sunshine/sites/default/files/SOTF\\_CurrentBylaws\\_Notice.pdf](https://sfgov.org/sunshine/sites/default/files/SOTF_CurrentBylaws_Notice.pdf)) to comply with San Francisco Sunshine Ordinance.

All the complaint points made in this complaint are systemic problems with the San Francisco public getting access to public records and meetings. Some of the problems the SOTF has no control over and result from the City Attorney's Office imposing requirements on the SOTF. If the systemic problems are addressed, it would cause a reduction of the 407 days to hear a complaint and the SOTF functioning better.

**"The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources" San Francisco Administrative Code, Section 67.21 (e)**

**San Francisco Administrative Code, Section 67.21**

(e) "The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision."

Provision **San Francisco Administrative Code, Section 67.21 (e)** spells out the SOTF responsibilities and timeline for petition resolution. The **San Francisco Administrative Code, Section 67.21 (e)** wording implies that it is the duty of the "Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources" to get petition resolutions "within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received" and custodian of records (any person in control of the record) to "immediately order

the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days". The providing of "sufficient staff and resources" would go up and down with compliance of the city to public access laws. Maybe the cost of providing "sufficient staff and resources" would motivate better compliance by the city at the initial public record request or meeting. **San Francisco Administrative Code, Section 67.21 (e)** clause, is not currently implemented and there is no indication it has ever been implemented.

**San Francisco Administrative Code, Section 67.21 (e)** clause to "provide sufficient staff and resources" is a different requirement than **San Francisco Administrative Code, Section 67.31** "The Clerk of the Board of Supervisors shall provide a full-time staff person to perform administrative duties for the Sunshine Ordinance Task Force and to assist any person in gaining access to public meetings or public information. The Clerk of the Board of Supervisors shall provide that staff person with whatever facilities and equipment are necessary to perform said duties." which is a different city department to provide a full-time staff person to perform mainly administrative duties. The **San Francisco Administrative Code, Section 67.31** is in a different Article of the San Francisco Sunshine Ordinance. The **San Francisco Administrative Code, Section 67.30 (a)** "The Sunshine Ordinance Task Force shall, at its request, have assigned to in an attorney from within the City Attorney's Office or other appropriate City Office, who is experienced in public-access law matters. This attorney shall serve solely as a legal advisor and advocate to the Task Force and an ethical wall will be maintained between the work of this attorney on behalf of the Task Force and any person or Office that the Task Force determines may have a conflict of interest with regard to the matters being handled by the attorney." The clauses for a SOTF attorney are also a separate provision and in a different Article of the San Francisco Sunshine Ordinance from "shall provide sufficient staff and resources" **San Francisco Administrative Code, Section 67.21 (e)**.

The San Francisco Sunshine Ordinance, Article III: Public Information and Public Records has the **San Francisco Administrative Code, Section 67.21 (e)** clause to "provide sufficient staff and resources" and the timelines for SOTF determination and record production after the SOTF determination if they find the city's cited exemption not valid.

The San Francisco Sunshine Ordinance, Article IV: Policy Implementation has the **San Francisco Administrative Code, Section 67.31** "The Clerk of the Board of Supervisors shall provide a full-time staff person to perform administrative duties" and the **San Francisco Administrative Code, Section 67.30 (a)** "The Sunshine Ordinance Task Force shall, at its request, have assigned to in an attorney".

The San Francisco Sunshine Task Force has been put in a position of overworking the volunteer members when their actual role should be as a quasi-judicial body that interprets public access laws to specific records or public access situations when the need arises and that are legitimately

dispute by the city and the public. “The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources” if properly implemented, would alleviate the load on the SOTF and help give the public access to records in a timely manner.

The Administrative Code specifically identifies members of the SOTF as "officers of the City and County." (**San Francisco Administrative Code, Section 1.50.**) Members are eligible to participate in the City's Health' Service System **Administrative Code, Section 16.700(c)(37).** Volunteer city employees with some benefit.

This petitioner has heard SOTF member Wolfe mention the “sufficient staff and resources” clause a couple of times, but nothing ever happens. This petitioner believes the city has somewhere in the past intentionally buried the implementation of this clause, so that it is forgotten. The city has, with intention, manipulated other provisions of the San Francisco Sunshine Ordinance to make it less effective and not in the public’s right to know interest.

“The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources” is very important and clearly part of ensuring enforcement of the San Francisco Sunshine Ordinance.

### **Supervisor of Records needs to respond “as soon as possible and within 10 days” (San Francisco Administrative Code, Section 67.21 (d))**

Use of the Supervisor of Records may speed up making records that are in dispute. **San Francisco Administrative Code, Section 67.21 (d)** below. There are a few problems even though **San Francisco Administrative Code, Section 67.21 (d)** “The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public.” This rarely happens and has taken me on occasions months. Even people that know to use this avenue have given up as a viable path. I suspect that this is the reason that SOTF does not push the use of the *supervisor of records*.

The supervisor of records has conflicting obligations being a lawyer in the City Attorney’s office, **San Francisco Administrative Code, Section 67.20 (c)**. The obligation to represent the city is greater than resolving a dispute. The current Supervisor of Record explains the obligations in a public record request for information this petitioner did (**Exhibit C**). Incidentally, the public information request to the supervisor of record took longer than 10 days for a response. I had to ask the SOTF Administrator to assist. She sent my request to the city attorney’s government e-

mail address. This petitioner suspects that [supervisor.records@sfgov.gov](mailto:supervisor.records@sfgov.gov) does not get monitored often.

The San Francisco Supervisor of Records should respond to all requests in 10 days. A request to them is a request for public information and is covered under the CPRA and the San Francisco Sunshine Ordinance.

**San Francisco Administrative Code, Section 67.21 (d)**

“If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.”

**After a SOTF determination, the custodian of records is to comply immediately and within 5 days is not enforced (San Francisco Administrative Code, Section 67.21 (e)).**

**San Francisco Administrative Code, Section 67.21 (e)**

“Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days”

This does not happen. **San Francisco Administrative Code, Section 67.21 (e)** is not enforced by SOTF. Following up on the SOTF complaint determinations, the SOTF Compliance and Amendment Committees should ascertain that a custodian of records did immediately comply or within 5 days with the person's public record request. When it does not happen, it should be an automatic violation, and “the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance” a continuation of **San Francisco Administrative Code, Section 67.21 (e)**. There is no need for a full SOTF determination or hearing. It was complied with or not.

Suggestion: city respondent with determinations by the SOTF that require action by the respondent should send the SOTF a record of the date they fully complied with determinations and the actions they took.

The “shall to notify the district attorney or the attorney general” happens every now and then by the full SOTF. The district attorney or the attorney general have done nothing in the past and are not required to do anything in the law. I have heard that the district attorney's office will do nothing unless there was a criminal act (stated at a SOTF meeting by SOTF Member Wolfe). This has led the SOTF to not follow the shall. Regardless of no action, the SOTF should follow the “shall notify” as part of the documentation of non-compliance and continuing to withhold public records and information. A pattern of non-compliance by the city may spur action by the district attorney office.

Example: a SOTF complaint File No. 21069

([https://sfgov.org/sunshine/sites/default/files/sotf\\_110321\\_item11.pdf](https://sfgov.org/sunshine/sites/default/files/sotf_110321_item11.pdf)). The Public Record Request started on April 28, 2021, NextRequest 21-2053

(<https://sanfrancisco.nextrequest.com/requests/21-2053>). Five months later, at the SOTF, November 3, 2021 meeting

([https://www.sfgov.org/sunshine/meeting/2021/sotf\\_110321\\_minutes](https://www.sfgov.org/sunshine/meeting/2021/sotf_110321_minutes)) , Agenda Item 11, **Action: Moved by Member Schmidt, seconded by Vice-Chair Yankee, to find that Public Works violated CPRA, Section 6253(b) by withholding all records in their entirety and orders the Respondent to resume production of records to the Petitioner and Administrative Code (Sunshine Ordinance), Section 67.26 for withholding all records in their entirety. In addition, the matter is forwarded to the Compliance and Amendments Committee for monitoring.** 7 Ayes 0 Nays.

The Department of Public Works, Mr. Steinberg, started producing records 27 days later on November 30, 2021, well beyond the 5 days. When this was pointed out to the SOTF Compliance and Amendments Committee, they did nothing and did not send the complaint back to the SOTF for a violation of “within 5 days” **Administrative Code, Section 67.21 (e)**. This is because the San Francisco Sunshine Ordinance enforcement mechanism has been completely subverted by the city. Enforcement is addressed later in this complaint.

SOTF complaint File No. 21069 is going to be used throughout this grand jury complaint, not with the intent of something being done specific to this complaint, but it illustrates many systemic problems going into enforcement and the Ethic Commission's role in the San Francisco Sunshine Ordinance. The dates may look old, but the path goes into 2024. It just showing how slow things really are.

While SOTF Annual reports track things like the time the SOTF takes to make a determination on a complaint, it does not track whether the city agencies comply with the 5-days provision or how long it takes for the records to be produced. It should.

## **6 Vote Majority (San Francisco Administrative Code, Section 4.104 (b)) in the Affirmative on Substantive Matters Favors the City and violates The Brown Act §54952.6.**

The city imposes **San Francisco Administrative Code, Section 4.104 (b)** on the SOTF to require a 6-vote majority in the affirmative on all substantive matters. This is regardless of if all seats on the SOTF being filled or members being absent for a hearing. The **SOTF By-Laws Section 7** echoes this position.

[https://www.sfgov.org/sunshine/sites/default/files/SOTF\\_CurrentBylaws\\_Notice.pdf](https://www.sfgov.org/sunshine/sites/default/files/SOTF_CurrentBylaws_Notice.pdf) This voting requirement heavily favors the city at the SOTF and violates The Brown Act and the **CA Constitution Article 1, Section 3 (b) (2)**.

The arguments against the City Attorney's Office position on this issue are going to be exhaustive since this is a very continuous issue. Some points alone should require a reversal of the require a 6-vote majority in the affirmative on all substantive matters (**San Francisco Administrative Code, Section 4.104 (b)**).

This issue has been brought up to SOTF on April 26, 2011

[https://www.sfgov.org/sunshine/ftp/meetingarchive/sunshine\\_full\\_task\\_force/Modules/042611item1-documentid=38315.pdf](https://www.sfgov.org/sunshine/ftp/meetingarchive/sunshine_full_task_force/Modules/042611item1-documentid=38315.pdf) and again in SOTF compliant File No. 21043, February 19, 2021, received. There have probably been other times. At a SOTF meeting in 2021, Mr. Wolfe stated that the issues of the majority vote requirement would not be heard and the SOTF compliant File No. 21043 has never been heard. Many of the arguments in the SOTF complaint File No. 21043 will be made here and further arguments and facts have been learned since 2021. Since the SOTF complaint File No. 21043 has never been on an agenda, there is no known public link to the file. If the Grand Jury wants this file, it will have to request it from SOTF or ask this petitioner. The petitioner believes all complaints should have a public link from the time it is submitted. This will be covered later in the complaint.

## **SAN FRANCISCO ADMINISTRATIVE CODE, SECTION 4.104. BOARDS AND COMMISSIONS – RULES AND REGULATIONS.**

**(b)** “....Unless otherwise required by this Charter, the affirmative vote of a majority of the members shall be required for the approval of any matter, except that the rules and regulations of the body may provide that, with respect to matters of procedure the body may act by the affirmative vote of a majority of the members present, so long as the

members present constitute a quorum. All appointive boards, commissions or other units of government shall act by a majority, two-thirds, three-fourths or other vote of all members. Each member present at a regular or special meeting shall vote "yes" or "no" when a question is put, unless excused from voting by a motion adopted by a majority of the members present.”

**The SOTF By Laws Section 7. Action at a Meeting; Quorum and Required Vote.** “The presence of a majority of the Task Force members (six) shall constitute a quorum. The affirmative vote of a majority of the members of the Task Force (six) shall be required for the approval of all substantive matters. Procedural matters shall require an affirmative vote of a majority of the members present.”

There are a lot of issues here.

SOTF and the City Attorney’s Office read “the affirmative vote of a majority of the members shall be required for the approval of any matter” as the majority of seats that constitutes the SOTF whether those 11 seats are vacant or filled or if a seat is filled but the member is absent. It doesn’t matter. The majority vote required is 6 votes or greater. All SOTF determinations are considered substantive. This works out that any unfilled seat on SOTF or member(s) that are absent are an automatic vote against a petitioner (the public’s right to know) and a vote in favor of the government position. The City Attorney position is that the city Charter provisions, like **SAN FRANCISCO ADMINISTRATIVE CODE, SECTION 4.104**, trump any rule or regulation of the SOTF or the San Francisco Sunshine Ordinance which is not an ordinance within the city Charter. This is true, but it ignores multiple issues: a selective interpretation of **SAN FRANCISCO ADMINISTRATIVE CODE, SECTION 4.104**, that the San Francisco Sunshine Ordinance is based on state law, California Public Records Act and The Brown Act which trumps the city Charters.

Before we go on, an example of the 6-vote majority requirement going against the public’s right to know.

On March 6, 2019, the full SOTF considered whether they had jurisdiction on a green benefit district formation group in SOTF complaint File No. 18086. The complaint was about the stopping of videotaping of a public meeting allowed **San Francisco Administrative Code, Section 67.14. Video and Audio Recording, Filming and Still Photography** and **The Brown ACT §54953.5 (a)**. The meeting room was funded by the city, the green benefit district formation group activities were funded solely by and promoted by the city and was using a city ordinance, **ARTICLE 15A\_ PUBLIC REALM LANDSCAPING, IMPROVEMENT AND MAINTENANCE ASSESSMENT DISTRICTS (\_GREEN BENEFIT DISTRICTS\_)**, to set up a benefit district to assessment/tax on the public. Some Green benefit district formation



members were placed by a city supervisor. The city paid consultants to move its goals forward in a contract. Like all city contracts, there are 6 places in the contract that state that all work products paid by contract are property of the city. This was the case here. To go further on benefit districts would be to go down a rabbit hole that is not the subject of this complaint. I give the above detail to give context to the SOTF vote on jurisdiction. The only thing I would add is that these private entities and city interfaces have the potential to be abused with taxpayer money being misused. The primary money behind these green benefit district formation groups was primarily coming from the Department of Public Works and Director Mohamad Nuru at the time.

March 6, 2019, Sunshine Ordinance Task Force, Minutes, Item 6., File No. 18086

Government Document Download Link:

[https://www.sfgov.org/sunshine/sites/default/files/sotf\\_030619\\_minutes.pdf](https://www.sfgov.org/sunshine/sites/default/files/sotf_030619_minutes.pdf)

**Action: Moved by Member Cannata, seconded by Chair Wolfe, to find jurisdiction.**

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

Ayes: 5 - B. Wolfe, Hyland, LaHood, J. Wolf, Martin

Noes: 4 - Hinze, Cannata, Tesfai, Yankee

Absent: 2 - Cate and Chopra

So even though 5 SOTF members voted Yes (a majority of the present vote) and 4 SOTF members voted No. The Noes win by less than a majority vote of 6. The city position wins. The item is voted not to be heard further. The SOTF issues an Order of Determination in favor of the minority no vote. Note the SOTF had all chairs filled, which is not usually the case. The 2 absent members become automatic no votes, because majority votes must be in the affirmative. Since the vote requirement in the affirmative is always 6 and a quorum of SOTF can be 6 to 11 members, you can have minority vote wins based on 1 to 5 committee members voting no. This makes the only fair chance of any majority affirmative vote in favor of the public (the petitioner) a full 11-seated SOTF and then the 6 vote majority becomes a simple majority of members present.

The city's **SAN FRANCISCO ADMINISTRATIVE CODE, SECTION 4.104. (b)** "the affirmative vote of a majority of the members shall be required for the approval of any matter" violates **The Brown Act § 54952.6** (provisions below) in that "actions taken" must be "to make a positive or a negative decision" "majority of the members" "when sitting". An item on a SOTF agenda can not end on a minority negative vote as the winning side because it is not a majority in a negative decision. The Sunshine Ordinance Task Force, a quasi-judicial body, mandated ("shall") by the public (**San Francisco Administrative Code, Section 67.21 (e)**) to decide the public's access to government records and meetings must comply with **California Constitution**

**Article 1, Section 3 (b) (2)** “A statute, court rule, or other authority, shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access.”

The city position mistakes a SOTF action taken in the affirmative as bringing about something to be, but SOTF is a quasi-judicial entity that is interpreting public access laws where the right of access to government information and meetings is the default and the action taken is to limit that right and that requires the majority vote. The vote is whether the government has identified a statute that correctly limits the right of access. Both the city respondent/agency and the SOTF are a part of the city government. Right now how SOTF frames and votes is turned on its head.

The Brown Act defines “action taken” in

**The Brown Act § 54952.6.**

“As used in this chapter, “action taken” means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.”

**The Brown Act requires a majority decision or an actual vote in the positive or negative.**

As read, there should be the requirement of a majority decision/vote in either the positive or negative for the Sunshine Ordinance Taskforce (SOTF) to make a determination or any motion or any order. A minority negative decision/vote cannot stand just as a minority positive decision/vote cannot stand. SOFT By-laws Section 7 fails in requiring 6 votes in the “affirmative” and not also in the negative.

**The Brown Act § 54952.6 with The Brown Act § 54952.2 (below) allows for a Simple Majority Decision/Vote of a Majority Members of a Legislative Body Sitting.**

**The Brown Act § 54952.6** “...decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.” There is no “all”. It is a “majority of the members” “when sitting” and this is in the definition of “action taken” on “a motion, proposal, resolution, order or ordinance.”

**The Brown Act § 54952.2.**

**(a)** “As used in this chapter, “meeting” means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.”

The definition of “meeting” in **The Brown Act § 54952.2 (a)** uses “means any congregation of a majority of the members of a legislative body” .to “take action on any item that is within the

subject matter jurisdiction of the legislative body.” Again, the majority is not “all” members of a legislative body. It is “any congregation of a majority of the members”.

In the SOTF Action: Moved by Member Cannata, seconded by Chair Wolfe, to find jurisdiction, that “lost” with 5 votes for jurisdiction and 4 votes against, if the default is to “maximizes the public’s right of access unless the Legislature has expressly provided to the contrary”, the city’s 6 vote majority rule in the affirmative and the minority vote “win” in this case is illegally going against the state constitution and state public access laws. This is the importance of **The Brown Act § 54952.6** that requires a majority to be either positive or negative. **What you have is a shift of the word framing in the above action to cause a “loss” under city rules of the people’s right of public access. A more proper framing would be Action: Moved by Member Cannata, seconded by Chair Wolfe, to \*not\* find jurisdiction with the citing of whatever law the Legislature has expressly provided to the contrary for denying the public access. This would swap the vote for 4 votes to not find jurisdiction and 5 votes against. The 4 votes in the affirmative would lose, jurisdiction would remain and the complaint would proceed to whether records are public or the right of public access to a meeting. Member Cannata made the motion but then voted against his own motion. The fact that a motion can be framed either in the positive or negative and manipulated to be a win or loss is not how decisions should be made and is Kafkaesque.**

The framing of a motion and the need to cite the specific law denying public access has been pointed out to the SOTF multiple times by this petitioner as public comment. September 1, 2021 full SOTF hearing transcript starting 1:42 and ending at 1:51 in **Exhibit E** (<https://www.youtube.com/watch?v=Wl-Ikv8G4TA>) has this petitioner's public comments and the then Chair Wolfe response explaining a little of the past SOTF history and why SOTF would not be taking up consideration of the 6 majority rule again. **Exhibit E** also includes this petitioner’s public comments at the SOTF October 5, 2022 meeting.

When motions can be made in a way that favors the minority as the previous jurisdiction example “**Moved by Member Cannata, seconded by Chair Wolfe, to find jurisdiction.**”, to manipulate what is required for a positive vote as winning, the city opens itself to easier corruption. The motion was moved by SOTF member Cannata, but he was one of the minority four vote that voted against his own motion. You have a manipulation of the motion and the fewer the city officials required to be unduly influenced to win. If only six commissioners attend a meeting, only one needs to be flipped. The combination of “the affirmative vote” and of a majority of the all members on commission, regardless of whether they are present or the seat is filled, allows for easy corruption. You could simply pay a commissioner or two to stay home or if the commission is depleted, it is just a matter of manipulation. A simple majority of those present required in the affirmative or negative (**The Brown Act § 54952.6**) reduces the chance of corruption and tyranny of the minority.

A version of the history that Chair Wolfe is referring to can be read in two articles that Richard Knee wrote back in June 2012. Since the links seem to stop working during this writing, the articles are presented as exhibits. A short summary of the article follows the next paragraph after.

Wiener's Mendacious Attack on City's Sunshine Panel (**Exhibit F**)

<http://www.fogcityjournal.com/wordpress/4693/wieners-mendacious-attack-on-citys-sunshine-panel/>, and Supervisors' Vendetta Against Sunshine Panel Incumbents (**Exhibit G**)  
<http://www.fogcityjournal.com/wordpress/4711/supervisors-vendetta-against-sunshine-panel-incumbents/> .

On May 22, 2012, the Board of Supervisors ousted three incumbents from the Sunshine Ordinance Task Force and stalled on the appointments of the four task force members. The Sunshine Ordinance Task Force could not meet for three months because of **Sunshine Ordinance, Administrative Code, Section 67.30 (a)** "At all times the task force shall include at least one member who shall be a member of the public who is physically handicapped and who has demonstrated interest in citizen access and participation in local government". Mr. Wolfe is disabled. He was one of three members purged from the SOTF. After he was reinstated by the Board of Supervisors, the SOTF was able to meet again. On December 5, 2012, at the SOTF meeting, the Sunshine Ordinance Task Force changed their by-law provision on voting to conform to the city's opinion on **SAN FRANCISCO ADMINISTRATIVE CODE, SECTION 4.104. (b)**. This is why the SOTF will not consider "the affirmative vote of a majority of the members shall be required for the approval of any matter" again.

This petitioner later found that in April 2011, Allen Grossman, an attorney sitting on the SOTF, wrote a letter to his fellow SOTF members about the city's 6-vote rule violating the CA constitution and state law and how motions are currently made should be reversed. While his full comments are included in **Exhibit D, page 5**, his most important points are below, because this is a very important issue.

"Over the past few years the SOTF's ability to remedy violations and maintain that "level playing field" has been seriously compromised as a result of the City Attorney's advice regarding both minimum quorum and voting requirements.

When only six SOTF members attend a meeting - which has happened recently - the petitioner will be denied access to records or the proper conduct of a meeting even if a five-member majority - 83% - vote "yes"; whereas, the respondent City department, official or agency will absolved by a •single "yes" vote - 16.67%. Now, with only nine seats filled, the petitioner will need no less a two-thirds majority.

Such a voting "rule" is manifestly unfair, untenable and cannot be justified under any appropriate standard. It is certainly contrary to the purposes of the constitutional and state law protections afforded the public for gaining access to public meetings and records. "

“In short, the current SOTF voting procedure whether a requested record is disclosable should be reversed because under California law all public records are presumptively disclosable and the City’s departments, officials and policy bodies have the burden of establishing that a specific exemption from disclosure applies. For that reason, a motion should not be for a determination of a “violation.” Rather, the motion put to the vote should be for a determination that the specific exemption relied on by the respondent applies; and the burden of proving that exemption should rest on the respondent, not on the petitioner to establish that it does not apply. Thus, in the case of the five to one vote that the petitioner would now lose, the respondent would lose and be required to disclose the requested record, which is as it should be.”

The combination of definitions in **The Brown Act § 54952.6** “action taken” and **The Brown Act § 54952.2 (a)** “meeting” allows for a majority of the members of a legislative body or entity when sitting to make a simple majority decision/vote in the positive or negative “upon a motion, proposal, resolution, order or ordinance.” The requirement of 6 votes affirmative is a local requirement by a local government. A larger than a simple majority in the positive or negative of a meeting of a majority of members would violate greater access laws set for in the California Constitution, The Brown Act and the San Francisco Sunshine Ordinance. The SOTF is required under **San Francisco Administrative Code, Section 67.5 Application of The Brown Act** to choose “the requirement which would result in greater or more expedited public access shall apply” and **San Francisco Administrative Code, Section 67.21 (k)** for the CPRA.

The Brown Act and the CPRA only allow cities to apply greater requirements of public access on themselves, but can not undermine the minimum requirements of the state public access laws.

#### **The Brown Act §54953.7.**

“Notwithstanding any other provision of law, legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in this chapter. In addition thereto, an elected legislative body of a local agency may impose such requirements on those appointed legislative bodies of the local agency of which all or a majority of the members are appointed by or under the authority of the elected legislative body.”

#### **CPRA §7922.505.**

“Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this division.”

The SOTF is not required to conduct hearings to make determinations. **San Francisco Administrative Code, Section 67.21 (e)** “Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial.” and says nothing

about a required hearing. Also note that **San Francisco Administrative Code, Section 67.21 (e)** applies only to a hearing “concerning the records request denial.” It is the denial of public access that is substantive. The fact that determinations can be made outside of a hearing for public access makes them more procedural than a rule and regulation and **SAN FRANCISCO ADMINISTRATIVE CODE, SECTION 4.104. BOARDS AND COMMISSIONS – RULES AND REGULATIONS. (b)** states “with respect to matters of procedure the body may act by the affirmative vote of a majority of the members present, so long as the members present constitute a quorum.” It is the denial of public access and the need to cite a law that exempts public access that requires a substantive vote. The SOTF could require even a greater than majority vote of themselves for that denial of public access under the city’s **SAN FRANCISCO ADMINISTRATIVE CODE, SECTION 4.104. (b)**. This argument has never been allowed to be considered by the SOTF.

The last sentence in **San Francisco Administrative Code, Section 67.21 (e)** “An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.” reinforces what any hearing is about the decision by the custodian of the public records to withhold the record requested.

**San Francisco City Administrative Code, Section 14.101, INITIATIVES (\*part of the city charter\*)**

“No initiative or declaration of policy approved by the voters shall be subject to veto, or to amendment or repeal except by the voters, unless such initiative or declaration of policy shall otherwise provide.”

The San Francisco Sunshine Ordinance of 1999 was an initiative approved by the voters and it clearly states “may conduct a public hearing concerning the records request denial.” **San Francisco City Administrative Code, Section 14.101, INITIATIVES** does not allow any authority of the city to “veto, or to amendment or repeal” to change “may” to “shall”, to force “concerning the records request denial” to the concerning of all record requests, and to flip the majority vote on its head to favor the city denying public access or favor a minority vote as a determination for public access to records and meetings. The city voters clearly voted the San Francisco Sunshine Ordinance of 1999 to give the public a “more efficient, or greater access to records” and meetings than the **CPRA §7922.505** and **The Brown Act §54953.7**. not less access. **San Francisco City Administrative Code, Section 14.101, INITIATIVES** argument against the 6-vote majority in the affirmative rule has never been allowed to be considered by the SOTF.

This grand jury complaint cannot overlook the City Attorney’s Office statements on **San Francisco Administrative Code, Section 4.104 (b)** “the affirmative vote of a majority of the members shall be required for the approval of any matter” as applied to the SOTF. On April 26, 2011, the SOTF revised its by-laws from a substantive motion that required a majority of those

present rather than a majority of all 11 voting seats. (The April 26, 2011 the SOTF minutes are terrible):

[https://www.sfgov.org/sunshine/ftp/meetingarchive/sunshine\\_full\\_task\\_force/Modules/SOTF%20Minutes%2011-04-26%20Final-documentid=52123.pdf](https://www.sfgov.org/sunshine/ftp/meetingarchive/sunshine_full_task_force/Modules/SOTF%20Minutes%2011-04-26%20Final-documentid=52123.pdf)

While April 26, 2011, is when the SOTF voted a change of the SOTF by-laws to a 6-vote present, there are discussions and documents before and after. Specifically, SOTF meetings January 25, 2011, April 26, 2011, July 11, 2012, November 7, 2012 (packet missing), and December 5, 2012, where the SOTF removes “present” from the 6-vote majority in the SOTF Bylaws (Agenda Item 10, packet missing).

The July 11, 2012, agenda item packet includes the agenda item packets from the January 25, 2011, and April 26, 2011 packets. This includes various city lawyer positions and positions of SOTF members. It can be downloaded here:

<https://sfgov.org/sunshine/sites/default/files/FileCenter/Documents/42137-071112item3.pdf>

It is attached as (**Exhibit D**).

The following are arguments pointing out problems with the city attorneys' previous written positions on SOTF 6 majority vote requirement in 42137-071112item3.pdf.

Page 2 and 3 of the document **Exhibit D**, Jerry Threet, Deputy City Attorney, to SOTF, Additional Advice re Majority Voting Requirement (06/28/2012)

Mr. Threet states in reference to **San Francisco Administrative Code, Section 4.104 (b)** “That section states that “the affirmative vote of a majority of the members shall be required for approval of any matter, and the body shall act by a majority . . . of all its authorized members.” **San Francisco Administrative Code, Section 4.104 (b)** does not use “of all its authorized members.” Since **San Francisco Administrative Code, Section 4.104 (b)** was last changed on 11/7/2006 (Amended by Proposition B, Approved 11/7/2006) neither Mr. Threet’s 2012 letter or Tom Owen’s, (Deputy City Attorney) 4/2011 letter referring to wording that has been changed at the time of the writing. Mr. Threet, a little further down, states the relevant portion of Section 4.104 (b) where “of all its authorized members” doesn’t exist. He then reiterates the non-existing “of all its authorized members” wording.

The city is certainly fine to interpret “Unless otherwise required by this Charter, the affirmative vote of a majority of the members shall be required for the approval of any matter, except that the rules and regulations of the body may provide that, with respect to matters of procedure the body may act by the affirmative vote of a majority of the members present, so long as the members present constitute a quorum.” the way they do, but they then ignore the next sentence “All appointive boards, commissions or other units of government shall act by a majority, two-thirds, three-fourths or other vote of all members.” which is specific to “all appointive boards,

commissions or other units of government”. The SOTF is an appointed other unit of government. This sentence allows these appointed units to vote by “other vote of all members”. It is a little open-ended since the provision goes through a majority and greater votes of all members.

Mr. Threet cites the Board of Supervisors as an example and cites a court case involving the Board of Supervisors voting. This comparison with the SOTF is not relevant for several reasons. The Board of Supervisors is an elected, paid board, which rarely has a vacancy for long. **San Francisco Administrative Code, Section 4.104 (b)** specifically differentiates between boards like the Board of Supervisors and “All appointive boards, commissions or other units of government” like the SOTF. The “All appointive boards, commissions or other units of government” provision would not make this distinction if it was not important. Another major difference is the Board of Supervisors is a legislative body that passes ordinances that add or restrict rights. The SOTF makes no law or ordinance. The SOTF is a quasi-judicial task force that makes determinations using public access laws of both the city and the state. It should make determinations that the city is correctly citing a law that keeps government records restricted. The SOTF is making judgments on voting against the default of records being public. This judgment requires a majority to be either positive or negative (**The Brown Act § 54952.6.**) or failing that the records are by default public and public access is the default to meetings. “In other words, all public records are subject to disclosure unless the Legislature has expressly provided to the contrary.” *Williams v. Superior Court* (1993). “.the constitutional canon requires an interpretation that maximizes the public’s right of access unless the Legislature has expressly provided to the contrary.” *Sierra Club v. Superior Court* (2013) and **CA Constitution Article 1, Section 3 (b) (2)**

May 21, 2007, Thomas J. Owen, Deputy City Attorney, Application of Charter Section 4.104 to the Sunshine Ordinance Task Force (**Exhibit D pages 12-17**)  
<https://sfgov.org/sunshine/sites/default/files/FileCenter/Documents/42137-071112item3.pdf>  
previously linked in this document.

I only want to respond a few points of Thomas J. Owen, Deputy City Attorney.

Thomas J. Owen, Deputy City Attorney: “it is a well-recognized principle of statutory construction that when the legislature (or here, the electorate) has carefully employed a term in one place and has excluded it in another, that term should not be implied where it was excluded. (*Brown V. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 725.)” (page 15)

The city attorneys are selectively using statutory construction in their arguments of the city’s **Administrative Code, Section. 4.104. (b)** when they conflate these two sentences “....Unless otherwise required by this Charter, the affirmative vote of a majority of the members shall be required for the approval of any matter, except that the rules and regulations of the body may provide that, with respect to matters of procedure the body may act by the affirmative vote of a



majority of the members present, so long as the members present constitute a quorum. All appointive boards, commissions or other units of government shall act by a majority, two-thirds, three-fourths or other vote of all members.” The first sentence is used by the Board of Supervisor which is not appointive. The second sentence goes to “. All appointive boards, commissions or other units of government” is to appointive bodies and how they shall act and vote. The second sentence does not include “the affirmative vote of a majority of the members”, but has the wording allows for a majority of those present. Thus “the affirmative vote of a majority of the members” in the first sentence has been “carefully employed a term in one place and has excluded it in another, that term should not be implied where it was excluded” by the Legislature. (*Brown V. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 725.). Either that or the second sentence has no meaning. Why would the legislature write the second sentence, if everything has been covered by the first sentence?

Thomas J. Owen, Deputy City Attorney “In carrying out these duties, the Task Force conducts City business and exercises part of the City's sovereign powers. it plays an active role in the ongoing implementation and enforcement of a City ordinance, both as to application of the existing law to particular facts and circumstances and as to the development and broader interpretation of the law.” (page 16, **Exhibit D**)

It is important to note the SOTF not only plays “an active role in the ongoing implementation and enforcement of a City ordinance, both as to application of the existing law to particular facts and circumstances and as to the development and broader interpretation of the law” but also an active role in the ongoing implementation and enforcement of the California Public Records Act (CPRA) and The Brown Act which subject its interpretations to state law that is above any city charter provisions. (**San Francisco Administrative Code, Section. 67.21 (k), San Francisco Administrative Code, Section 67.5, CPRA §7922.505., and The Brown Act §54953.7.**)

The following is on the last sentence of **SAN FRANCISCO ADMINISTRATIVE CODE, SECTION 4.104. (b)**

“Each member present at a regular or special meeting shall vote "yes" or "no" when a question is put, unless excused from voting by a motion adopted by a majority of the members present.”

December 7, 2022, SOTF agenda item 8, SOTF Complaint File No. 22014, Sergei Severinov vs San Francisco Police Department, Sergei Severinov had a number of SOTF complaints against the San Francisco Police Department for public record requests. This public record request involved an incident where several police cars arrived at his house. Some of the police officers entered the house. Neither he nor his wife were home. Only his teenage daughter was home and two of her friends. The daughter was terrified. Things were said by the officer that made her cry. There was no warrant to enter the house. These incidents involve allegations of racism.

**From the December 7, 2022, SOTF Minutes:**

[https://www.sfgov.org/sunshine/meeting/2022/sotf\\_120722\\_minutes](https://www.sfgov.org/sunshine/meeting/2022/sotf_120722_minutes)

**Action: Moved by Member Schmidt, seconded by Member Stein, to notify the Attorney General of the failure of the Police Department to respond adequately to a Sunshine Ordinance Task Force prior order pursuant to Administrative Code, (Sunshine Ordinance), Section 67.21(e).**

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

Ayes: 6 - Schmidt, Stein, Yankee, Wolfe, LaHood, Wong

Noes: 1 - Hyland

Absent: 2 - Hill, Wolfe

Note: The minutes are wrong as published. This action failed, because SOTF member Wong left during the vote and SOTF member Wolfe is in the Ayes and Absent. There are only 9 members on the SOTF at the time, with two seats unfilled. This vote is another example of a majority vote in the positive failing, with just one vote in the no that wins. A member of the public does not get full implementation of the San Francisco Sunshine Ordinance on a majority vote by SOTF with a SOTF member ducking out of the vote and the majority vote rule of 6 in the affirmative.

There are problems with this action. The first problem is the action did not pass under the 6 vote majority in the positive rule. SOTF member Wong did not vote yes because she was not present during the vote, proven by the audio transcript. SOTF member Wolfe was absent also and he in the above vote count is both in the Ayes and the Absents. Audio and transcription for the December 7, 2022, SOTF meeting <https://www.youtube.com/watch?v=mTgwnnzGNzY>. At the 2:56:19 point of the recording, the vote starts. At the 2:57:12 point of the recording, Wolfe is noted absent. At the 2:57:21 point of the recording, Wong is noted as having stepped away. At the 2:57:42 point of the recording, it noted that the action has failed. At the 2:59:41 point of the recording, SOTF member is noted as returning to the meeting. At the 2:59:49 point of the recording, a member of the public asks why they would not re-vote on that last action as SOTF members had stepped away during the vote and that it was a disservice to the person with the complaint. At the 3:00:50 point of the recording, Mr. Sullivan notes that SOTF member Wong had stepped away from the vote and may not have realized what was going on. That the vote was another example of minority rule over the majority and goes against the California Constitution that should be broadly in favor of the rights of the petitioner for open government. At the 3:02:11 point of the recording, Wong explains she stepped away because of a work emergency popped up.

The last sentence of **SAN FRANCISCO ADMINISTRATIVE CODE, SECTION 4.104. (b)**  
“Each member present at a regular or special meeting shall vote "yes" or "no" when a question is put, unless excused from voting by a motion adopted by a majority of the members present.”

If all **SAN FRANCISCO ADMINISTRATIVE CODE, SECTION 4.104. (b)** is followed it seems to require that SOTF members Wong and Wolfe having been present at the meeting and the discussion (not present 6:54 PM and present again 7:01 according to the minutes, 7 minutes gone) should (“shall”) have voted or the vote needed to be redone. This clause of **SAN FRANCISCO ADMINISTRATIVE CODE, SECTION 4.104. (b)** is important to have as you can not have members just duct out of a vote whenever to not take a position or have a vote fail by not voting. Especially when the city is saying every vote is substantive and requires 6 votes to pass. There are San Francisco Administrative Code ethics codes that require procedures for recusal for certain ethical issues. (This will be covered later.) Allowing commissioners to step away from a vote whenever during a discussion and vote, makes voting just at the whims of a commissioner, at worst manipulating of the vote for reasons that are not before the public and could be an unethical covering up something. I am sure that this is what the last sentence in **SAN FRANCISCO ADMINISTRATIVE CODE, SECTION 4.104. (b)** is meant to address by requiring a vote “yes” or “no” “unless excused from voting by a motion adopted by a majority of the members present”.

The SOTF did not excuse “from voting by a motion adopted by a majority of the members present” SOTF Member Wong or Wolfe. If the city gives meaning to the first sentence of **SAN FRANCISCO ADMINISTRATIVE CODE, SECTION 4.104. (b)** shouldn't the last sentence mean something also or are we just picking and choosing what to follow?

This petitioner knows no San Francisco Administrative Code that addresses what happens when the last sentence of **SAN FRANCISCO ADMINISTRATIVE CODE, SECTION 4.104. (b)** is violated. It seems that if a vote violates any San Francisco Administrative Code, it should be automatically nullified.

Note: The petitioner sent a public records request to [sotf@sfgov.org](mailto:sotf@sfgov.org) and the SOTF Administrators for the notification sent Attorney General that “passed” on December 7, 2022, SOTF Minutes, agenda item 8, SOTF File No.22014. 7 days have passed since the 10 day limit for a public record request. No response yet. This petitioner does not believe the minutes posted are the minutes the SOTF approved. Maybe they will figure it all out?

## **Ethics Commission violates ignores the San Francisco Sunshine Ordinance, Administrative Code, Section 67.30 (c) and Section 67.35 Enforcement Provisions (d)**

### **San Francisco Sunshine Ordinance, Administrative Code, Section 67.30 (c)**

“The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts.”

The Ethics Commission is clearly named “under this ordinance”, the San Francisco Sunshine Ordinance.

### **San Francisco Sunshine Ordinance, Administrative Code, Section. 67.35 Enforcement Provisions**

(d) “Any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a City or State official 40 days after a complaint is filed.”

**San Francisco Administrative Code, Section 67.30 (c)** “shall make referrals to a municipal office with enforcement power” while not stating specifically the Ethics Commission clearly refers to the Ethics Commission as it is a city municipal office with enforcement powers. This petitioner believes the provision was written in such a way to not exclude any potential municipal offices with enforcement powers that may be created in the future. The SOTF has a number of times over the years tried to be in dialog with the Ethics Commission over its enforcement powers. Over the years, the SOTF has sent many complaints of violations of public access laws to the Ethic Commission. These have been ignored or sent back. The history of which would make this grand jury complaint very long, so only one example will be given.

**San Francisco Administrative Code, Section. 67.35 Enforcement Provisions (d)** is very clear in naming the Ethic Commission as part of the San Francisco Sunshine Ordinance “for enforcement and penalties under this act” The words “under this act” is very clear to mean the whole San Francisco Sunshine Ordinance, not a clause or provision. The Ethics Commission does not want to enforce the entire act that is implied in **San Francisco Sunshine Ordinance, Administrative Code, Section 67.30 (c) and Section 67.35 (d)**.

Via a public request for information, the Ethics Commission states: “Regarding your question about the applicability of Admin. Code, Section 67.35(d), this Code, Section does not establish the Ethics Commission as having jurisdiction for the enforcement of Sunshine Ordinance provisions beyond allegations of willful violations by City elected officials and Department

Heads provided by Section 67.34 or the Show Cause hearing process (see Ethics Commission Enforcement Regulations Section 10)” (**Exhibit H**)

Beyond the previous stated argument **that San Francisco Administrative Code, Section. 67.35 Enforcement Provisions (d)** says “under this act”, for enforcement and penalties, there are a couple other problems with the Ethics Commission reasoning.

If **San Francisco Administrative Code, Section 67.34** (allegations of willful violations by City elected officials and Department Heads) is the only provision that establishes “the Ethics Commission as having jurisdiction for the enforcement of Sunshine Ordinance”, then the Ethics Commission being mentioned in **San Francisco Administrative Code, Section 67.35 (d)** would not be needed. Under the Ethics Commission’s logic, **San Francisco Administrative Code, Section 67.35 (d)**, mention of the Ethics Commission would be redundant with no additional meaning. **San Francisco Administrative Code, Section 67.34** can standalone and does not need the Ethics Commission's repeated mention in **San Francisco Administrative Code, Section 67.35 (d)** to be applicable.

“We must read statutes as a whole, giving effect to all their provisions, neither reading one section to contradict others or its overall purpose, nor reading the whole scheme to nullify one section. "The rules governing statutory construction are well established. Our objective is to ascertain and effectuate legislative intent. [Citations.] . . . In this regard, all parts of a statute should be read together and construed in a manner that gives effect to each, yet does not lead to disharmony with the others. [Citations.]" (*City of Huntington Beach v. Board of Administration* (1992) **4 Cal. 4th 462, 468.**) "[L]egislation must be construed as a whole while avoiding an interpretation which renders any of its language surplusage. [Citation.]" (Ibid.) "In examining the language, the courts should give to the words of the statute their ordinary, everyday meaning [citations] unless, of course, the [**93 Cal. App. 4th 893**] statute itself specifically defines those words to give them a special meaning [citations]).

The other problem with the Ethics Commission logic is that the **San Francisco Administrative Code, Section. 67.35 (d)** also lists “in any court of competent jurisdiction” before naming them with “or Ethics Commission”. With the logic they apply to themselves, does this mean “in any court of competent jurisdiction” can pick and choose or limit what part of “under this act” what parts of the Sunshine Ordinance this provision they will enforce?

I want to note the **San Francisco Administrative Code, Section. 67.35 Enforcement Provisions (d)** is true that the Ethics Commission is obligated to take complaints for the entire Sunshine Ordinance act for enforcement and penalties, it then makes the **San Francisco Administrative Code, Section 67.30 (c)** “shall make referrals to a municipal office with enforcement power” true for the Ethics Commission by default.

The Ethics Commission would only be required to enforce all the San Francisco Sunshine Ordinance if the task force makes a referral to them under **San Francisco Sunshine Ordinance, Administrative Code, Section 67.30 (c)** or if no enforcement action taken by a City or State official 40 days after a complaint is filed under **San Francisco Sunshine Ordinance, Administrative Code, Section. 67.35 Enforcement Provisions**, so the Ethic Commission is not the main entity of arbitration as the SOTF is.

January 8, 2024, a complaint (SOTF Complaint File No. 23098) was filed with the Sunshine Ordinance Task Force against the Ethic Commission for violating **San Francisco Administrative Code, Section. 67.35 Enforcement Provisions (d)**. The city interfered with the complaint outside of a hearing, which was allowed by Chair Yankee and Vice Chair Stein. The complaint has not been heard by the Sunshine Ordinance Task Force.

How SOTF Complaint File No. 23098 against the Ethics Commission came to be is important because it shows a lot of unaccountability in enforcing the San Francisco Sunshine Ordinance and The Brown Act by the SOTF and the Ethics Commission. The short version:

Going back to SOTF complaint File No. 21069, The Department of Public Works, Mr. Steinberg started producing records 27 days later on November 30, 2021, well beyond the 5 days of SOTF determination that the records needed to be released immediately. The August 23, 2022, SOTF Compliance and Amendment Committee held a hearing on this complaint, of which the petitioner noticed key document were not included in the complaint hearing packets which is required by the San Francisco Sunshine Ordinance, The Brown Act, and SOTF's complaint procedures. The petitioner tried to notify the SOTF Compliance and Amendment Committee on the agenda item 1. Call to Order, Roll Call, and Agenda Changes but they took no public comment. **San Francisco Administrative Code (Sunshine Ordinance), Section 67.16**, ("a brief summary of each person's statement during the public comment period for each agenda item") and **Section 67.15 (c)**, SOTF Bylaws, Article IV, Section 11 requires public comment on each agenda item. The petitioner made the comment at the agenda item 2 public comment period that documents were missing from an agenda item.

#### **San Francisco Administrative Code, Section 67.15**

(c) "Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes."

After my notifying of missing documents, SOTF Compliance and Amendment Committee Chair LaHood said at about the 7:28 audio mark: "One of our committee members will be leading those two cases and we'll have a chance to discuss if there are any issues with what was included

in the packet and whether we are able to proceed with our discussion today so we will get to those later.”

At the agenda item, they did nothing and continued on. Petitioners have limited time to talk. They closed the complaint even though there were multiple violations, including going beyond the 5-day law of records after a SOTF determination and important records submitted by the petitioner were not included in the agenda item. (**San Francisco Administrative Code, Section 67.21 (e)**)

List of violations on August 23, 2022, by the SOTF Compliance and Amendment Committee:

**Administrative Code (Sunshine Ordinance), Section 67.16**, SOTF Bylaws, Article IV, Section 11 by failing to take public comment on each agenda item, for allegedly violating **Administrative Code (Sunshine Ordinance) Section 67.7 (b)** by holding complaint hearings on agenda knowing that there were missing documents in the agenda packets (there are 8 other laws that could be cited), for allegedly violating **SOTF By-laws, Article IV, Section 7, By-laws Article VI, Section 1 (d), SOTF Public Complaint Procedures C, 1, 3) and AC § 4.104 (b)** by closing complaints on a 3 member vote and not forwarding them to the full SOTF for the affirmative vote of a majority of the members shall be required for the approval of any matter, except that the rules and regulations of the body may provide that, with respect to matters of procedure the body may act by the affirmative vote of a majority of the members present, so long as the members present constitute a quorum, for allegedly violating **Administrative Code (Sunshine Ordinance) Section 67.30 (c)** by failing to advise City departments on appropriate ways in which to implement the San Francisco Sunshine Ordinance, and **Administrative Code (Sunshine Ordinance) Section 67.1 (g)** “However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process”.

The petitioner filed a complaint against the SOTF Compliance and Amendment Committee with the full SOTF.

SOTF decided that they couldn’t hear complaints against committees, even though those members could recuse themselves. Two SOTF members objected.

**From SOTF Minutes December 7, 2022 agenda item 6 A and B**  
**([https://www.sfgov.org/sunshine/meeting/2022/sotf\\_120722\\_minutes](https://www.sfgov.org/sunshine/meeting/2022/sotf_120722_minutes)):**

**Action: Moved by Chair Yankee, seconded by Member Wolfe to not hear the complaints filed against the SOTF and /or its committees due to a conflict of interests and instructed the SOTF Administrator to refer the petitioners to Administrative Code 67.35 (d) for**

**information on how they may institute proceedings for enforcement with other entities and to further inform the petitioners that they may submit their complaint for an informal discussion and potential action for corrections and that could be made but that no formal order of determination will be issued by the Sunshine Task Force.**

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

Ayes: 6 - Yankee, Wolfe, LaHood, Stein, Hyland, Wong

Noes: 2 - Schmidt, Padmanabhan

Absent: 1 – Hill

Two of the SOTF members LaHood and Wong voted on this action even though they sat on a SOTF Compliance and Amendment Committee that had a complaint against them filed with SOTF. This appears to violate the **San Francisco Administrative Code, Section 3.210.**

**VOTING ON OWN CHARACTER OR CONDUCT.**

**(a) Prohibition.** No officer or employee of the City and County shall knowingly vote on or attempt to influence a governmental decision involving his or her own character or conduct, or his or her appointment to any office, position, or employment.

as their vote at the time blocked the SOTF from hearing a complaint submitted to the SOTF that involved their conduct in conducting a meeting violating the San Francisco Sunshine Ordinance and The Brown Act. They knew of the complaint and it was mentioned that there was a complaint against a committee during the discussions.

Audio/Transcript, December 7, 2022 Full San Francisco Sunshine Ordinance Hearing  
<https://www.youtube.com/watch?v=mTgwnnzGNzY> at timestamp at 1:27:32.

Before submitting the complaint to the full SOTF, the petitioner had already tried multiple times for an informal discussion of the violations for potential action for corrections to hold the hearing again with all submitted records. There is no informal process or how to go about it, as stated in the SOTF action on December 7, 2022 agenda item 6 A and B. Informal communications had already been tried. After 40 days, the petitioner used the **San Francisco Administrative Code, Section 67.35 (d)** to file a complaint with the Ethics Commission.

I explained to the Ethics Commission that it was the SOTF that had sent me and included the above SOTF action in my complaint. The Ethics Commission denied the complaint because it was not their responsibility. The petitioner then filed a public information request with the Ethics Commission for an explanation of how they interpret **San Francisco Administrative Code, Section 67.35 (d)** which resulted in the Ethics Commission explanation in **Exhibit H.**



Armed with that information, the petitioner filed a SOTF complaint (Complaint File No. 23098) against the Ethics Commission that they were not following the **San Francisco Administrative Code, Section 67.35 (d)**.

February 7, 2024, full SOTF, agenda item 8, had a hearing on whether the petition was outside the scope of matters that the SOTF can hear as a complaint and to close the complaint. The petitioner was not allowed to speak during the hearing except for public comment. There is a packet for this agenda item. SOTF closed the complaint without actually having a hearing on the complaint with a number of SOTF members parroting an Ethics Commission's point. When a SOTF member tried to make a point by the petitioner, he was admonished by the SOTF Chair to not go into the complaint.

The start hearing February 7, 2024, full SOTF, agenda item 8 can be heard at [https://www.youtube.com/watch?v=PKw\\_zY2IgE](https://www.youtube.com/watch?v=PKw_zY2IgE) at timestamp at 1:27:32. At time stamp 1:37:32 the SOTF Chair states that the Clerks Office (Mr. Victor Young) had asked them to close the case (without a hearing) but SOTF Chair and Vice Chair felt uncomfortable doing so. At the 1:29:22 time stamp, the SOTF Chair says he and the Vice Chair had discussed this with Mr. Victor Young.

The Clerk of Boards is a different city department than the SOTF. This was pointed out at the SOTF January meeting when a SOTF member had interfered and delayed a public record request of the SOTF Administrator, SOTF complaints File No. 22115 and File No. 22116. There were no public records responsive to the request known by the next day of the request, but the SOTF member instructed the SOTF Administrator to respond that they needed more time because of the voluminous nature of the records requested. They then did not find the SOTF member in violation of inappropriately interfering because he was in a different department. The CPRA makes no distinction of city departments to a city as a whole being an agency (discussed later in this compliant). Now SOTF is allowing a City Clerk to interfere with a complaint item outside of a hearing. Discussing matters that are before a government body, especially a quasi-judicial government body, is against The Brown Act and the San Francisco Sunshine Ordinance that require matters to be discussed in the open and in public. **San Francisco Sunshine Ordinance Section 67.1. (g)** “.. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.” The need for an open and public meeting is repeated throughout The Brown Act and the San Francisco Sunshine Ordinance and included as part of every San Francisco meeting notice requirement, **San Francisco Administrative Code, Section 67.7 (g)**.

### **The Brown Act §54950**

“In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct

of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.”

February 7, 2024, full SOTF, agenda item 8, complaint File No. 23098, voted to not accept the complaint filing with only SOTF member Schmidt (the lawyer) voting no.

The idea that the Sunshine Ordinance Task Force can not hear complaints on any provision in the San Francisco Sunshine Ordinance goes against the San Francisco Sunshine Ordinance and purpose of the SOTF that the voters wanted.

**San Francisco Sunshine Ordinance Section 67.30**

(c) “The task force shall advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter. The task force shall develop appropriate goals to ensure practical and timely implementation of this chapter.”

The voter wanted a strong SOTF and not weaker than any other government entity like the Ethics Commission.

**San Francisco Administrative Code 67. 1 (e)** “Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force, can protect the public's interest in open government.”

The Ethics Commission is required under the **San Francisco Administrative Code, Section 67.30 (c)** and **San Francisco Administrative Code, Section 67.35 (d)** to enforce the San Francisco Sunshine Ordinance.

There is possibly another municipal office with enforcement power under this ordinance, the Mayor's Office.

**San Francisco Sunshine Ordinance, Administrative Code, Section 67.30 (c)**

“The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts.”

The Mayor is mentioned with enforcement power in the San Francisco Sunshine Ordinance under the **San Francisco Administrative Code, Section 67.17** but it is specific.

“Every member of a policy body retains the full constitutional rights of a citizen to comment publicly on the wisdom or propriety of government actions, including those of the policy body of which he or she is a member. Policy bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials for expressing their judgments or opinions, including those which deal with the perceived inconsistency of non-public discussions, communications or actions with the requirements of State or Federal law or of this ordinance. The release of specific factual information made confidential by State or Federal law including, but not limited to, the privilege for confidential attorney-client communications, may be the basis for a request for injunctive or declaratory relief, of a complaint to the Mayor seeking an accusation of misconduct, or both.”

But the San Francisco Administrative Code says the Mayor will enforce all relating to the City and County of San Francisco and these would include the San Francisco Sunshine Ordinance, the CPRA and The Brown Act.

**San Francisco Administrative Code, Section 3.100** “The Mayor shall enforce all laws relating to the City and County, and accept service of process on its behalf”.,

**San Francisco Administrative Code, Section 3.100 3.** “Receipt and examination of complaints relating to the administration of the affairs of the City and County, and timely delivery of notice to the complainant of findings and actions taken;”

**The SOTF Compliant Procedures 5 b. “conflict of interest” policy on SOTF committees may violate the San Francisco Administrative Code on “conflict of interest”, and other problems with “conflict of interest” transparency. Possible City Ethics Code expansion on recusal policy San Francisco Administrative Code, Section. 3.209. RECUSALS. Currently, the full SOTF and SOTF committees cannot be held accountable to follow the San Francisco Sunshine Ordinance, the CPRA and The Brown Act except for bringing a case to the Superior Court of California.**

December 7, 2022, agenda item 6, SOTF voted on a “conflict of interest” policy  
[https://www.sfgov.org/sunshine/sites/default/files/sotf\\_120722\\_minutes.pdf](https://www.sfgov.org/sunshine/sites/default/files/sotf_120722_minutes.pdf)

This was covered in the 6-vote in the affirmative city rule section of this complaint. This policy passed with 2 yes votes from SOTF member LaHood and SOTF member Wong even though they had a complaint on their conduct for violating provisions of The Brown Act and the San

Francisco Sunshine Ordinance against the SOTF Compliance and Amendment Committee they sat on. It was talked about during the discussion that a SOTF committee had a SOTF complaint against them, though the committee was not named.

**From SOTF Minutes December 7, 2022 agenda item 6 A and B**  
**([https://www.sfgov.org/sunshine/meeting/2022/sotf\\_120722\\_minutes](https://www.sfgov.org/sunshine/meeting/2022/sotf_120722_minutes)):**

**Action: Moved by Chair Yankee, seconded by Member Wolfe to not hear the complaints filed against the SOTF and /or its committees due to a conflict of interests and instructed the SOTF Administrator to refer the petitioners to Administrative Code 67.35 (d) for information on how they may institute proceedings for enforcement with other entities and to further inform the petitioners that they may submit their complaint for an informal discussion and potential action for corrections and that could be made but that no formal order of determination will be issued by the Sunshine Task Force.<**

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

**Ayes: 6 - Yankee, Wolfe, LaHood, Stein, Hyland, Wong**

**Noes: 2 - Schmidt, Padmanabhan**

**Absent: 1 - Hill**

Resulting in the SOTF Complaint Procedures

([https://sfgov.org/sunshine/sites/default/files/Complaint\\_Procedure.pdf](https://sfgov.org/sunshine/sites/default/files/Complaint_Procedure.pdf))

**“B**

**5. Complaints naming a single member of the SOTF, a committee of the SOTF, or the full SOTF shall be handled in the following manner:**

**a. For complaints naming a single member of the SOTF, that member will be instructed to present their case before the SOTF as a respondent; additionally, that member must recuse themselves from participating in the discussion for that complaint and from voting on it as a member of the SOTF.**

**b. The SOTF will not conduct formal hearings on complaints naming a committee of the SOTF or the full SOTF due to a conflict of interest. For those complaints, the SOTF Administrator shall refer the complainants to Administrative Code 67.35 for information on how they may institute proceedings for enforcement by other entities, and to further inform the complainants that they may submit their complaints to the SOTF Administrator for an informal discussion, which may lead to correction; however, no formal Order of Determination will be issued by the SOTF in such an instance.”**

A few San Francisco Administrative Code, Ethic Code Sections that matter to the points of this grand jury complaint: The San Francisco Ethic Codes can be found in Article XV Ethics: Sec. 15.100 - 15.107, Appendix C: Ethics Provisions C3.699-10 – C8.105, and Chapter 2: Conflict of Interest and Other Prohibited Activities, Sec 3.200 - Sec 3.240. Possible other places and part of the listed sections link to state ethic codes.

**San Francisco Administrative Code, Section 15.103 Conflict of Interest**

“Public office is a public trust and all officers and employees of the City and County shall exercise their public duties in a manner consistent with this trust. The City may adopt conflict of interest and governmental ethics laws to implement this provision and to prescribe penalties in addition to discipline and removal authorized in this Charter. All officers and employees of the City and County shall be subject to such conflict of interest and governmental ethics laws and the penalties prescribed by such laws.”

**San Francisco Administrative Code, Section 3.1-103 Filing Officers**

“Persons holding designated positions shall file the specified statements, declarations, and certificates with the filing officers designated in this Section 3.1-103.

**(a) MEMBERS OF BOARDS AND COMMISSIONS.**

**(1)** Members of the following boards and commissions shall file their Form 700 Statements of Economic Interests, Sunshine Ordinance Declarations, and Certificates of Ethics Training with the Ethics Commission:”

One in a long list is “Sunshine Ordinance Task Force”

**San Francisco Administrative Code, Section 3.210. VOTING ON OWN CHARACTER OR CONDUCT.**

**(a)** “Prohibition. No officer or employee of the City and County shall knowingly vote on or attempt to influence a governmental decision involving his or her own character or conduct, or his or her appointment to any office, position, or employment.

**(b)** Exceptions. Nothing in this Section shall prohibit an officer or employee from (i) responding to allegations, applying for an office, position, or employment, or responding to inquiries; or (ii) participating in the decision of his or her board, commission, or committee to choose him or her as chair, vice chair, or other officer of the board, commission, or committee.

This petitioner would argue that SOTF members LaHood and Wong knowingly voted to create a SOTF policy that blocked a hearing by SOTF on their conduct, and this influenced a governmental decision involving his or her own character or conduct. The other SOTF members have less of a conflict of interest in implementing this policy.

There are several overarching problems with the SOTF creating this “conflict of interest” policy.

It creates a policy which is not in the city's administrative code, which could be used by other commissions and boards. One city “commission” setting a standard on a substantive measure about ethics on a 6 votes yes, 2 votes no, where 2 of the yes 6 votes are suspected of an ethical conflict of interest.

By the SOTF creating a blanket “conflict of interest” not based on specific individual “conflict of interest” and the specific issue at hand, this petitioner argues it violates **San Francisco Administrative Code, Section 4.104 BOARDS AND COMMISSIONS – RULES AND REGULATIONS**

(a) “Unless otherwise provided in this Charter, each appointive board, commission or other unit of government of the executive branch of the City and County shall:”

1. “Adopt rules and regulations consistent with this Charter and ordinances of the City and County.”

There are no city ethic San Francisco Administrative Code that state a whole commission or committee of can have a “conflict of interest”. It is not needed. If each individual on a commission or committee decides they have an individual “conflict of interest” on an issue and follow existing ethic codes, you could have enough “recusals” that dip the members below a quorum that can hear that issue, and then that commission or committee can not have an action on that item.

The SOTF had an action that created a policy that is outside of their jurisdiction.

It is bad policy to have a blanket “conflict of interest”. A blank “conflict of interest” can cover up actual conflict of interests of members who are required by some San Francisco Administrative and State ethic codes to make a public statement of what there “conflict of interest” is and leave the meeting until after the issue is heard.

If the SOTF “conflict of interest” policy is consider valid and commissions and boards cannot have hearings on petitions about themselves because of “conflict of interest” and cannot have petition hearings on their committees because of “conflict of interest”, then it should be written into the San Francisco Administrative Code to cover all commissions and committees. Genuine “conflict of interests” that are not addressed by the San Francisco Administrative Code leave the door open for corruption. There also needs to be a path to address a whole commission or committee “conflict of interest” because not having accountability leads to corruption.

As an example, it could be written into the San Francisco Administrative Code:

## **San Francisco Administrative Code, Section 3.210. VOTING ON OWN CHARACTER OR CONDUCT.**

**(a) Prohibition.** No officer, employee, *commission, board or sub-committees* of the City and County shall knowingly vote on or attempt to influence a governmental decision involving *their* own character or conduct, or his or her appointment to any office, position, or employment. (*The italicize is the change.*)

There are San Francisco “conflict of interest” codes that state prohibitions and then what city officials are then instructed what to do if they have a “conflict of interest”. There are several San Francisco “conflicts of interest” that state the prohibition, but there is no required action other than do not vote or influence an issue. They are written more with enforcement in mind and not compliance. Compliance, in what is a commission member required to do to not influence a decision if they have a “conflict of interest”? These San Francisco “conflict of interest” codes do not mesh well in a clear procedural way with **SAN FRANCISCO ADMINISTRATIVE CODE, SECTION 4.104. (b)** “Each member present at a regular or special meeting shall vote "yes" or "no" when a question is put, unless excused from voting by a motion adopted by a majority of the members present.”

To illustrate the previous paragraphs' points:

**San Francisco Administrative Code, Section 3.206 and 3.207** “conflict of interests” deal with financial, things of value, or contribution to influence official consideration or not to consider and actions. These 2 sections of code which are referred to in the **San Francisco Administrative Code, Section 3.209** on how to recuse oneself from a meeting and other required actions.

## **San Francisco Administrative Code, Section 3.209. RECUSALS.**

**(a)** “Recusal Procedures. Any member of a City board or commission who has a conflict of interest under Sections 3.206 or 3.207, or who must recuse himself or herself from a proceeding under California Government Code Section 84308, shall, in the public meeting of the board or commission, upon identifying a conflict of interest immediately prior to the consideration of the matter, do all of the following:”

**(1)** “publicly identify the circumstances that give rise to the conflict of interest in detail sufficient to be understood by the public, provided that disclosure of the exact street address of a residence is not required;”

**(2)** recuse himself or herself from discussing or acting on the matter; and

**(3)** leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on and remains on the consent calendar.

(b) Recusal Notification. A member of a City board or commission who is required to file a statement of economic interests pursuant to Article III, Chapter 1 of the Campaign and Governmental Conduct Code shall file a recusal notification form each time the member recuses himself or herself, as required by subsection (a).

(1) The member shall file the original recusal notification form, along with a copy of the meeting agenda containing the item involving the conflict of interest, with the Ethics Commission within 15 calendar days after the date of the meeting at which the recusal occurred.

(2) The member shall file the recusal notification form with the Ethics Commission even if the member is not present at the meeting that would have involved the conflict of interest.

(3) The recusal notification form shall be filed under penalty of perjury in a method prescribed by the Ethics Commission and shall include, at a minimum, the following:

(A) the member's name;

(B) the name of the member's board or commission;

(C) the date of the meeting at which the recusal occurred or would have occurred;

(D) the agenda item number, a brief description of the matter, and a statement of whether the matter concerns the making of a contract; and

(E) the financial interest causing the recusal.

(c) Exception. The requirements of this Section 3.209 shall not apply to the members of the Board of Supervisors."

(Added by Ord. 129-18, File No. 180280, App. 5/30/2018, Eff. 6/30/2018, Oper. 1/1/2019)

**San Francisco Administrative Code, Section 3.209. RECUSALS** does not apply to other San Francisco "conflict of interest" codes, **San Francisco Administrative Code, Section 3.210 to 3.216** and probably others.

As an example of not requiring recusal procedures, the **San Francisco Administrative Code, Section 3.210. VOTING ON OWN CHARACTER OR CONDUCT.**

(a) "**Prohibition.** No officer or employee of the City and County shall knowingly vote on or attempt to influence a governmental decision involving his or her own character or conduct, or his or her appointment to any office, position, or employment."

The assumption of the code seems to be that the government's decision are not to be influenced by a person with a "conflict of interest" of character or conduct **is known by all**, including the public, as there is no requirement to publicly declare a "conflict of interest". The code refers to "shall knowingly" which suggests that the person may not know or can claim not knowing at the



time. What happens to a decision that after it is known that there was a “conflict of interest” by a member who voted on the decision? There is no administrative code that addresses this.

If an issue before a commission or board involves a family member of a commission member either in the room or not, the commission member is not required to make it public or leave the room. It is even questionable if it is considered a “conflict of interest” if it does not involve an employment action. (**San Francisco Administrative Code, Section 3.212. DECISIONS INVOLVING FAMILY MEMBERS**).

This petitioner argues that when a “conflict of interest” is known by a commissioner or member of the public identifies it, that the “conflict of interest” is made public and that the member recuse themselves from the discussion and vote on that item. Leaves the room. If a “conflict of interest” becomes relevant or known during the discussion, it is made publicly known and **SAN FRANCISCO ADMINISTRATIVE CODE, SECTION 4.104. (b)** “unless excused from voting by a motion adopted by a majority of the members present.” is followed. Public notification of “conflict of interest” and recusal increases transparency. This petitioner suggests a notification of all “conflict of interests” and the recusal are sent to the Ethics Commission to just log in case other issues arise. This follows the **San Francisco Administrative Code, Section 3.209. RECUSALS**.

It would still allow “Nothing prohibit an officer or employee from (i) responding to allegations, applying for an office, position, or employment, or responding to inquiries; or (ii) participating in the decision of his or her board, commission, or committee to choose him or her as chair, vice chair, or other officer of the board, commission, or committee.” **San Francisco Administrative Code, Section 3.210. VOTING ON OWN CHARACTER OR CONDUCT (b)**.

“Conflict of interest” may vary in severity and penalty, but any “conflict of interest” that influences and creates a government decision makes that decision equally corrupt in that it should not stand. Because of this, all “conflicts of interest” should have the same compliance requirements. The “conflict of interest” is not the corruption, it is the not following compliance requirements where the corruption occurs. The why is the severity and requires various penalties.

As shown in many incidents above, the SOTF has shown little ability to self-reflect and correct errors in public access laws that they or their SOTF committees do. They seem to be caught up in that their action would have to be the finding of a “violation”, instead of an action correcting what happened and establishing procedures makes sure the mistake does not happen in the future. The complaint process is the only process for the public to petition the SOTF for consideration on any issue. The San Francisco Sunshine Ordinance uses the word “petition” instead of “complaint”, **San Francisco Administrative Code, Section 67.21 (d) and (e)**.

Currently, the SOTF complaint procedures 5 b not holding hearings on petitions against themselves or one of their committees because an undefined “conflict of interest”, gives no viable path for the issue to be addressed and the SOTF knows that. It ducts transparency and accountability. The SOTF refers a petitioner to an informal discussion with the SOTF Administrator, but that is undefined and is a “brush off” of the public member’s concern and is not public. The SOTF has ruled that the SOTF Administrator is a different “department”, and has no enforcement power in the San Francisco Administrative Code over the SOTF. They may as well say you can have an informal discussion with pick your city employee that has no power of enforcement.

SOTF complaint procedures 5 b refers complaints to **San Francisco Administrative Code, Section 67.35 Enforcement Provisions** that has been covered in the previous Ethics Commission section of this grand jury complaint. The Ethics Commission claims they have no added jurisdiction for all the San Francisco Sunshine Ordinance under **San Francisco Administrative Code, Section 67.35 (d)** and the SOTF has duct its responsibility to have a hearing about this even though “The task force shall advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter.” **San Francisco Administrative Code, Section 67.30 (c).**

The other named entity in this **San Francisco Administrative Code, Section 67.35** is “in any court of competent jurisdiction” which will be covered in the last part of this grand jury complaint of the public's ability to bring issues to court. Since the SOTF is primarily a meeting entity, any violation will be of The Brown Act and the meeting part of the San Francisco Sunshine Ordinance for greater requirements. The Brown Act has a “poison pill” in bringing an issue to a Superior Court unless the government entity is really dug in and still found in violation by the court. There are significant costs and time making it impractical. It takes seconds for city officials to violate public access laws. The remedies and accountability take a lot more time and energy.

The Brown Act and the meeting part of the San Francisco Sunshine Ordinance are to government meeting bodies and not to officials. It is unknown that a complaint could be made of the presiding officer of a SOTF meeting or SOTF committee under the SOTF compliance procedure 5 a. Given the SOTF prior history holding itself and its members accountable to public access laws, they would probably point out the first sentence in this paragraph.

In writing this grand jury complaint, this petitioner noticed the SOTF complaint procedures posted on their website did not include the B 5 a and b and other changes.

([https://www.sfgov.org/sunshine/sites/default/files/Complaint\\_Procedure.pdf](https://www.sfgov.org/sunshine/sites/default/files/Complaint_Procedure.pdf))

Confused, this petitioner sent an immediate disclosure of public information request to the SOTF and their SOTF administrators. The response and the request are **Exhibit I**. The SOTF

administrator says that the B 5 a and b are correct and the complaint procedures will be corrected. This petitioner downloaded the correct SOTF complaint procedures from the above SOTF complaint procedure link in September 2023. Somewhere between this petitioner download and this writing, the SOTF link complaint procedures reverted to an older version. Complaint procedures that were included in SOTF agendas and SOTF agenda items discussing changes to SOTF complaint procedures have all been not their current SOTF complaint procedures. Example: April 3, 2024 SOTF, Agenda Item 5  
[https://www.sfgov.org/sunshine/sites/default/files/sotf\\_040324\\_item5.pdf](https://www.sfgov.org/sunshine/sites/default/files/sotf_040324_item5.pdf)  
It is unknown how long this has been.

But the petitioner's main point in point out the immediate disclosure of public information request to the SOTF and their SOTF administrators on the SOTF complaint procedures missing B 5 a and b (**Exhibit I**) is that while the SOTF administrator responds to the first part of the request in relationship to the subject of the request, the SOTF complaint procedure B 5 a and b, but the last two questions when the requester does not explicitly restate a reference to the SOTF complaint procedure B 5 a and b, the SOTF administrator answer as if they are general questions with no reference to the SOTF complaint procedure B 5 a and b the only subject of the public record request. This happens all the time to public record requesters. Public record requesters have to over explain what they are asking. This is not reasonable. The **CPRA § 7922.530 (a)** uses the word "reasonably" "each state or local agency, upon a request for a copy of records that **reasonably** describes an identifiable record or records". The San Francisco Sunshine Ordinance does not have as strong of language. This "reasonably describes an identifiable record or records" is the only requirement of a public record requester. Both the CPRA and the San Francisco Sunshine Ordinance have "duty to assist" the requester provisions. **CPRA Article 4. Duty to Assist in Formulating Request § 7922.600** and **San Francisco Administrative Code, Section 67.21 (c)**. This petitioner argues that the SOTF administrator answers to the last two questions generally in **Exhibit I** in a deliberate hindrance of giving information specific to the subject of the immediate disclosure of public information request on the SOTF complaint procedures. If they truly did not understand the nature and reasoning for the last two questions to the subject of the public record request, the SOTF complaint procedures B 5 a and b, that custodians of records have a duty to assist the public record requester. This need to over-explain everything in a public record request is unreasonable.

This need to over-explain is why this grand jury compliant is written in the way it is. This petitioner does not know what the requirements are of the grand jury or if this complaint will be addressed, but this complaint will be made public at some time.

## **City officials delaying making responsive public records public by misuse of an “incremental or “rolling” basis (Administrative Code, Section 67.25 (d) or inflating public records and piling in junk records.**

The purpose of city officials delaying of making responsive public records public and by misuse of an “incremental or “rolling” basis” (**San Francisco Administrative Code, Section 67.25 (d)**) or inflating public records and piling in junk records is to hide from the requester meaningful records that may affect policy decisions if they were made public. This happens to journalist and members of the public trying to get pertinent records before a decision or action that is before a decision making body. Custodians of Records (any person with government records (**San Francisco Administrative Code, Section 67.21 (a)**)) run out the clock or hide a few responsive records in a pile of junk records.

It is important to understand the CPRA’s required minimum deadline times to respond to a record request before learning how the San Francisco Sunshine Ordinance build on those requirements for a more efficient and greater access to records requirement for the city of San Francisco (**San Francisco Administrative Code, Section 67.21 (k)**).

The CPRA set time limits for when records have to be released are 10 or plus 14 days, with a maximum of 24 days. Another section of the CPRA uses the words “shall make the records promptly available to any person”.

### **CPRA §7922.535**

(a) “Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. If the agency determines that the request seeks disclosable public records, the agency shall also state the estimated date and time when the records will be made available.”

Within 10 days, a notice is required with an estimated date and time when the records will be made available.

### **But CPRA §7922.535 (b)**

"No notice shall specify a date that would result in an extension for more than 14 days".

It is not the 14 more days to provide a notice. It is the notice that should not specify an extension of more than 14 days to make the records public. The times of **CPRA §7922.535** and **CPRA §7922.535 (b)** add up to 24 days maximum.

**CPRA § 7922.500.**

“Nothing in this division shall be construed to permit an agency to delay or obstruct the inspection or copying of public records”.

And

**CPRA §7922.530.**

(a) “Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, **shall make the records promptly available to any person ...**”

**CPRA §7922.530.** speeds up the request.

California Supreme Court has made no decision on the promptly available to any person or any timeline for making responsive records assessable.

The California Appeals Court is mixed. Note that *Rogers v. Superior Court* 19 Cal. App. 4th 469, 483 (1993) is older.

*Marken v. Santa Monica-Malibu Unified Sch. Dist.*, 202 Cal. App. 4th 1250, 1268 n.14 (2012), the court of appeal noted that it had “serious questions” about whether a delay of one month, following the school district’s determination that the records requested were subject to disclosure, was warranted. In contrast, the court in *Rogers v. Superior Court* 19 Cal. App. 4th 469, 483 (1993), as modified (Oct. 13, 1993) determined that responsive records that were not given to the petitioner until three months after the original request did not violate the Act, as the records were promptly disclosed when they became available.

The San Francisco Sunshine Ordinance is clear and stronger on the time records need to be released, dropping the word “notice” and spelling out timelines. All the below sections of law are found under Article III Public Information and Public Records in the San Francisco Sunshine Ordinance. This is important because some sections use the word “article” to refer to all sections in it. For example: “Failure to comply with this provision is a violation of this Article.” (**San Francisco Administrative Code, Section 67.25 Immediacy of Response (d)**)

**San Francisco Administrative Code, Section 67.21**

(a) “Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of

a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.”

**(b)** “A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall 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 under express provisions of this ordinance.”

#### **San Francisco Administrative Code, Section 67.25**

**(b)** “If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code, Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.”

**Note:** Mentioned above **Government Code (CPRA) Section 6456.1** is now **CPRA §7922.535**

**(b).** The San Francisco Sunshine Ordinance appears to have made a mistake in saying “an extension of 10 days as provided in Government Code, Section 6456.1” when it has always been a 14 day extension. The 10 days written in the **San Francisco Sunshine Ordinance San Francisco Administrative Code, Section 67.2 (b)** could be seen as a more stringent requirement for the city of San Francisco that the CPRA allows (**CPRA §7922.505**).

#### **San Francisco Administrative Code, Section 67.25 Immediacy of Response**

**(d)** “Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and **all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected.** This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this Article.”

#### **San Francisco Administrative Code, Section 67.25 Immediacy of Response**

(a) “Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.”

If you read **San Francisco Administrative Code, Section 67.25 Immediacy of Response (a) and (d)**, the intent of “**on an incremental or "rolling" basis**” is to “**produced as soon as possible by the end of the same business day that they are reviewed and collected**” and as the second sentence “**to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected.**” It is not to create a new unlimited deadline but that records should be made public on a rolling basis in 10 days or within an extension of 20 or 24 days (10+ 10 (SF Sunshine Ordinance) or 14 (CPRA)) starting the day after a member of the public makes the request. **San Francisco Administrative Code, Section 67.25 Immediacy of Response (a)** clearly states these are the maximum deadlines as stated in this article “**Maximum deadlines provided in this article are appropriate for more extensive or demanding requests**”.

The SOTF routinely does not enforce record maximum deadline limits for claims of voluminous or the previously discussed 5 days after a determination has been made by the SOTF. They appear to read “**on an incremental or "rolling" basis**” as allowing city officials to have an unlimited deadline because that is the practice. This is what city official respondents have promoted in their arguments.

The actually producing of responsive records in a timely manner is what gives meaning to the CPRA and The San Francisco Sunshine Ordinance as far as public access to records. If producing of responsive records could be indefinite or a date months or years away, then it would make both acts meaningless.

Joe Dworetzky is a journalist with Bay City News. He had a complaint against the San Francisco Department of Homelessness and Supportive Housing (HSH), SOTF Complaint File No. 23060. [https://www.sfgov.org/sunshine/sites/default/files/sotf\\_050124\\_item12.pdf](https://www.sfgov.org/sunshine/sites/default/files/sotf_050124_item12.pdf)

**“San Francisco homelessness agency found to violate ‘Sunshine Ordinance’”**

<https://localnewsmatters.org/2024/05/03/san-francisco-homelessness-agency-found-to-violate-sunshine-ordinance/>

*“The records requests were filed about a month before the Board of Supervisors was scheduled to hold hearings on HSH’s budget. At that time HSH was seeking to increase its budget, even though many other departments were facing budget cuts. (The supervisors ultimately approved a \$40 million increase to \$713 million.)*

*BCN wanted the requested information promptly so it would have time to write about what it discovered before HSH's budget hearings — typically a time when supervisors can ask agencies hard questions about their spending and operations.*

*Under the ordinance, HSH was required to produce the requested documents in 10 days, at least in the absence of a claim that they were exempt from disclosure. HSH made no such claim and on the 10th day it produced a number of documents, but said that it was continuing to search for more and would produce them on a “rolling basis,” if, as, and when they became available.*

*Thereafter, HSH produced more documents on an irregular pace and did not make final production until two months after the original request. By that time, the budget hearings had come and gone.”*

I believe the San Francisco Department of Homelessness and Supportive Housing slow-walked this record request so the information would not be available before the Board of Supervisors was scheduled to hold hearings on HSH's budget.

Mr. Dworetzky filed his public record request to the San Francisco Department of Homelessness and Supportive Housing on May 13, 2023, a month before June 15, 2023, hearing with the Board of Supervisors. It was not until July 14, 2023, that the San Francisco Department of Homelessness and Supportive Housing produced the last document. Claims of needing more time to produce records would be June 2, 2023 (20 days after the request) or June 6 (24 days). July 14, 2023, is 42 days or 38 days after the deadline. He notes in his complaint that the violations are not isolated events. He notes the required deadlines in law. On page 8 of his complaint in talking about “rolling production”, **San Francisco Administrative Code, Section 67.25(d)**, “HSH stood the section its head to say grants the department an exemption from production deadlines once it says its production is rolling.”

Any delay beyond deadlines for making records public is a withholding of those records, because the city is denying those records to the public sometimes for purposes that they cannot be used by everyone in making a decision. The purpose of delaying records to push through an action that may otherwise fail or be difficult to pass if all records and facts (information) are known is not a justified exemption in the CPRA, The Brown Act, or San Francisco Sunshine Ordinance. **San Francisco Administrative Code, Section 67.27** requires “Any withholding of information shall be justified, **in writing**, as follows:

(a) “A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.



(b) “A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.”

(c) “A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.”

(d) “When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.”

Also see **CPRA § 7922.54 (a) (b) (c)**

Sometimes records can be justified from withholding for a certain period of time, like during litigation, but can be released to the public record requester after litigation, but this justification should be put into writing or suggest alternative sources suggested. **San Francisco Administrative Code, Section 67.27**

Mr. Dworetzky Complaint File No. 23060 was filed with SOTF on June 27, 2023. The full SOTF hearing on this SOTF complaint on May 1, 2024. 310 days after the complaint filing date and well over the 45 days required by the **San Francisco Administrative Code 67.21 (e)**. SOTF found Department of Homelessness and Supportive Housing violated “**Administrative Code (Sunshine Ordinance), Section(s) 67.21(b)**”, by failing to respond to a public records request in a timely manner. This complaint did not necessarily require a hearing because of “concerning the records request denial”, but the complaint requires corrective measures so it doesn’t happen again by “provide information to other City departments on appropriate ways in which to implement this chapter.” (**San Francisco Administrative Code, Section 67.30 (c)**). The SOTF condones the city's interpretation and use of **San Francisco Administrative Code, Section 67.25 (d)** of using a claim of “rolling production” as an exemption from public record laws deadlines because it routinely allows unlimited time production of records.

## **Responsive records and flooding Non-Responsive Records to create a “needle in a haystack” obstruction**

**San Francisco Administrative Code, Section 67.25 Immediacy of Response (d)** use the word responsive 4 times as in “any and all responsive public records “

“Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County **shall produce any and all responsive public records** as soon as reasonably possible on an incremental or "rolling" basis such **that responsive records** are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that **are responsive to a records request** until all potentially **responsive documents** have been reviewed and collected. Failure to comply with this provision is a violation of this Article.”

#### **CPRA §7911.600 (a)**

**(1)** “Assist the member of the public to identify records and information that are **responsive to the request** or to the purpose of the request, if stated.”

City officials will use junk records to delay or hide the few actual responsive records in a pile of non-responsive records to a request, a needle in a haystack situation. Mr. Dworetzky complains about this.

Going back to SOTF complaint File No. 21069, The Department of Public Works, Mr. Steinberg that has been used as an example in city officials not following the 5-day rule and the Ethic Commission enforcement sections of this document. The public record request can be found at <https://sanfrancisco.nextrequest.com/requests/21-2053>. There are a lot of violations and roadblocks in this public request delaying actual responsive records or to deny. Most of these violations will not be the subject of this point on responsive records. There were only 4 responsive records given that had anything to do with Green Benefit Districts (1 example of responsive records to this request, **Exhibit J**). Two records were copies of the other two. The 4 responsive records were produced on May 9, 2022, just over a year from the initial record request date of April 28, 2021. On April 29, 2021, Mr. Steinberg claims over 13,000 responsive records, back and forth 7,500 documents, then 8,586 items. He claimed 2 years to produce all records. May 3, 2021, the requester uses **San Francisco Administrative Code, Section 67.21 (c)** "when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b)." Mr. Steinberg responses on May 3, 2021, “You will note, however, that we have already essentially provided to you such information when we notified you of the approximate number of emails responsive to your request.” Just providing numbers is not with “with enough specificity to enable a requester to identify records in order to make a request under (b)." This was part of the SOTF complaint File No. 21069 and should have required the SOTF to address this. The SOTF did nothing.

Skipping to after the November 3, 2021 SOTF meeting that found Mr. Steinberg in violation and should immediately start producing records, Mr. Steinberg is still claiming 8,586 items with 3 years to produce now. On November 30, 2021, Mr. Steinberg starts producing records. 27 days after the SOTF action, well pass the within 5 days require by **San Francisco Administrative Code, Section 67.21 (e)**.

June 27, 2022, was the last day Mr. Steinberg produced records, a total of 1886 records, 1882 non-responsive records. Far less than the 8,586 records Mr. Steinberg claimed were responsive to the record request. This petitioner guesses Mr. Steinberg ran out of steam and realized he was just doing work piling on junk records. 234 of the records were commercial ads for pet medication, cars, insurance (1 example **Exhibit K**). 67 were photos or logos. The rest of the records were back-and-forth e-mails on other Department of Public Works projects that had nothing to do with Green Benefit Districts. On December 27, 2021, Mr. Steinberg stops sending e-mail notifications of document releases or exemption of a record on NextRequest, violates **CPRA §7922.535 (a) and San Francisco Administrative Code, Section 67.21 (b)**.

Mr. Steinberg was deliberately trying to deny and delay the responsive records from being public and violated many provisions of the San Francisco Sunshine Ordinance and the CPRA.

Meeting Minutes November 3, 2021, the only action the SOTF took was

**Action: Moved by Member Schmidt, seconded by Vice-Chair Yankee, to find that Public Works violated CPRA, Section 6253(b) by withholding all records in their entirety and orders the Respondent to resume production of records to the Petitioner and Administrative Code (Sunshine Ordinance), Section 67.26 for withholding all records in their entirety. In addition, the matter is forwarded to the Compliance and Amendments Committee for monitoring.**

**The SOTF relies on the San Francisco Sunshine Ordinance exclusively as the final authority while the San Francisco Sunshine Ordinance, the CPRA and The Brown Act all say to the effect which “In case of inconsistent requirements”.....”the requirement which would result in greater or more expedited public access shall apply.”**

No California City Ordinances and Charters can negate any provision in the state’s CPRA or The Brown Act. City governments must follow the minimum set forward in the CPRA and The Brown Act. (**CPRA §7922.505 and The Brown Act §54953.7.**)

The CPRA and The Brown Act allow cities to impose greater public access requirements on themselves, but not less.

**The Brown Act §54953.7.**

“Notwithstanding any other provision of law, legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in this chapter. In addition thereto, an elected legislative body of a local agency may impose such requirements on those appointed legislative bodies of the local agency of which all or a majority of the members are appointed by or under the authority of the elected legislative body.

**CPRA §7922.505.**

“Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this division.”

The San Francisco Sunshine Ordinance says:

**San Francisco Administrative Code, Section 67.5 Meetings To Be Open and Public; Application of Brown Act.**

“All meetings of any policy body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et. seq.) and of this Article. In case of inconsistent requirements under the Brown Act and this Article, the requirement which would result in greater or more expedited public access shall apply.”

**San Francisco Administrative Code, Section 67.21**

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

The SOTF regularly only consults and finds violations using only the San Francisco Sunshine Ordinance when the language in the CPRA and The Brown Act are often stronger or the SOTF does not find any violation at all because they do not apply the CPRA and The Brown Act to a public access issue not covered or well written in the San Francisco Sunshine Ordinance. The San Francisco Sunshine Ordinance adds in some provisions greater and strong requirements and wording than the CPRA and The Brown Act but in many provisions the San Francisco Sunshine Ordinance is lacking. An easy example of this is definitions.

I will give a few as examples for both the CPRA and The Brown Act and how they affect the public and complaints brought before the SOTF. To truly cover this topic would take too long for this complaint.

**CPRA §7922.500.**

“Nothing in this division shall be construed to permit an agency to delay or obstruct the inspection or copying of public records.”

The word “obstruct” is not in the San Francisco Sunshine Ordinance. Delay is used 3 times in the San Francisco Sunshine Ordinance. “Delay” is a violation of time. “Obstruct” is a powerful word and covers any obstruction of the inspection or copying of public records, whether it is spelled out in law or is not clear in the law. This is because all government records are presumed to be public unless there is a specific exemption in law that makes them not public. To legally “obstruct” records from the public, an agency must justify the exemption in law. A similar argument can be made with The Brown Act.

**CPRA §7921.005.**

“A state or local agency may not allow another party to control the disclosure of information that is otherwise subject to disclosure pursuant to this division.”

The SOTF has a number of times allowed a contractor to control the disclosure of information or claim there was no information. Information differs from a record in that it can be in any record, including instructions on a bag of concrete used by the Department of Public Works or a contractor. The San Francisco Sunshine Ordinance adds oral information as a greater requirement in its definition **San Francisco Administrative Code, Section 67.20 DEFINITIONS**

**(b)** ““Public Information” shall mean the content of “public records” as defined in the California Public Records Act (Government Code Section 6252), whether provided in documentary form or in an oral communication.”

SOTF complaint File No. 22013, Mr. Yuli Huang made a public record and information request for the in-place trench installation method of the shoring, sheeting and bracing used by a contractor hired by the Department of Public Works (DPW) for the Sunset and Parkside Sewer and Pavement Renovation Project. Mr. Huang had damage to his property by the contractor during this project. City contracts have 6 provisions that work product and documents created for the contracted work are property of the city and can be inspected at anytime.

The Department of Public Works, Mr. Steinberg, asked the contractor to provide the requested information, but used a leading question with a note of “If there is no such document, there is no requirement that you create one.” (This could be viewed as obstruction, **CPRA §7922.500.**) The

contractor responded that it did not have such a document. The requested construction method information could be a text, images, a voice clip, or the record in any other format including oral instructions about steps and parameters that must have been communicated to the on-site workers for quality assurance and control. It is hard to believe that the contractor did not have a record of how the in-place trench installation method of the shoring, sheeting and bracing took place.

**“SOTF found Moved by Member Schmidt, seconded by Member Wolfe, to find no violation with the caveat that the record would be public if it existed.”**

The idea that the contractor had no set method of in-place trench installation of the shoring, sheeting and bracing for the Sunset and Parkside Sewer and Pavement Renovation Project is not credible. The SOTF is another party to control the disclosure of information that is a public record. This petitioner believes that if the SOTF had in part used the CPRA, they would have come up with a different action.

Mr. Yuli Huang had previously petitioned the supervisor of records (city attorney) for a determination in writing of whether the record requested, or any part of the record requested, is public. (**San Francisco Administrative Code, Section 67.21 (d)**) The supervisor of records stated that it could not confirm or deny whether the requested record was public and refused to provide a determination. Another indication that Mr. Huang was being given the runaround by the city of San Francisco and the contractor.

The San Francisco Sunshine Ordinance adds greater requirement than The Brown Act in definitions to meetings like passive bodies (**San Francisco Administrative Code, Section (c)**) but problematic definitions can cause lesser requirements than The Brown Act. The SOTF by only relying on the San Francisco Sunshine Ordinance and not considering the greater definitions in the CPRA and The Brown Act, can and does come to wrong conclusions.

The San Francisco Sunshine Ordinance has a number of provisions that could be used to try and undermine The Brown Act definitions or are added but nonsensical like **San Francisco Administrative Code, Section 67.3 (b)** “Meetings” shall mean any of the following:

(2) “A series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of members has become involved in such gatherings; or”

(3) “Any other use of personal intermediaries or communications media that could permit a majority of the members of a policy body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereupon.”

Besides “use of personal intermediaries” .. that could “permit a majority of the members of a policy body to become aware of an item” as a definition of a meeting. “Personal” to a majority of members? How would such “meetings” be publicly notified, agenzized and minutes created that are a requirement of any defined meeting? Both **San Francisco Administrative Code, Section 67.3 (b)(2) and (3)** appear to violate **The Brown Act 54952.2 (b) (1)**.

#### **The Brown Act §54952.2 (b)**

(1) “A majority of the members of a legislative body **shall not**, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.”

So **San Francisco Administrative Code, Section 67.3 (b)(2) and (3)** can not be meetings.

**San Francisco Administrative Code, Section 67.3. Definitions. (b) (4) (4) "Meeting" shall not include any of the following:**

(C-1) “The attendance of a majority of the members of a policy body at an open and noticed meeting of a standing committee of that body, provided that the members of the policy body who are not members of the standing committee attend only as observers.”

but this provision is nonsensical when considering **The Brown Act § 54952 as used in this chapter, “legislative body” means:**

(b) “A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, **except that standing committees of a legislative body, irrespective of their composition**, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.”

The meeting of a “standing committee of that body” is covered under The Brown Act regardless of “the attendance of a majority of the members of a policy body at an open and noticed meeting of a standing committee of that body” who “attend only as observers”. Since **The Brown Act §**

**54952 (b)** provides a greater definition that the San Francisco Sunshine Ordinance it must be used by the San Francisco Sunshine Ordinance.

There are going to be other examples of the CPRA and The Brown Act having greater requirements than the San Francisco Sunshine Ordinance cited in this grand jury complaint.

**SOTF dismisses complaints because of the wrong department is written on the complaint form or the complaint is against “the wrong department”.**

SOTF online complaint form with “Complaint against which Department or Commission \*\*” required <https://www.sfgov.org/sunshine/complaint-form> The pdf does not state required and the complaint procedure “strongly recommends”. There is no requirement in the San Francisco Sunshine Ordinance for the petitioner to correctly identify the government entity that should be held accountable, but the practice of SOTF on this does matter. The San Francisco Sunshine Ordinance simply says.

**San Francisco Administrative Code, Section 67.21 Process for Gaining Access to Public Records; Administrative Appeals.**

(e) “If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public.”

but it is required by SOTF to do:

**San Francisco Administrative Code, Section 67.21**

(e) “Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request.”

And

**San Francisco Administrative Code, Section 67.30**

(c) “The task force shall advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter.”



The requirement of finding the right respondents for accountability and attending a hearing is the SOTF responsibility. The petitioner only needs to petition about records not being received in a timely manner or a meeting action that denies them equal public access. It helps if the petitioner identifies the correct respondent, but not doing so does not mean a dismissal of a complaint. The heart of a petition is the action by the city, “the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public” **San Francisco Administrative Code, Section 67.21 (e)**.

If a custodian of records does not have the records requested because they are in the wrong department and find themselves before the SOTF, then they violated the **San Francisco Administrative Code, Section 67.21**

(c) “A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.”

The San Francisco Sunshine Ordinance creates a definition “Department” which is used to dismiss a complaint as the wrong “department” as previously explained or not hold a city official accountable because they are in another department. This is using a narrow definition in the San Francisco Sunshine Ordinance that is not in the CPRA and The Brown Act.

### **San Francisco Administrative Code, Section 67.20 Definitions**

Whenever in this article the following words or phrases are used, they shall mean:

(a) "Department" shall mean a department of the City and County of San Francisco.

### **CPRA §7920.510.**

“As used in this division, “local agency” includes any of the following:

(a) A county.

(b) A city, whether general law or chartered.

(c) A city and county.

(d) A school district.

(e) A municipal corporation.

(f) A district.

(g) A political subdivision.

(h) Any board, commission, or agency of the foregoing.

(i) Another local public agency.

(j) An entity that is a legislative body of a local agency pursuant to subdivision (c) or (d) of Section 54952.”

## **The Brown Act §54951**

“As used in this chapter, “local agency” means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.”

Nothing in the CPRA or The Brown Act breaks down to a city department or office. All city departments or offices are the city and all are under the umbrella definition of “local agency” or agency. The SOTF, Ethic Commission or any municipal enforcement entity can use “department” if it is applied to require greater requirements of public access, but using “department” to limit public access is not allowed, like dismissing a complaint.

SOTF complaint File No. 22115

([https://sfgov.org/sunshine/sites/default/files/sotf\\_010324\\_item10.pdf](https://sfgov.org/sunshine/sites/default/files/sotf_010324_item10.pdf)) was heard before the full SOTF on January 3, 2024. The record request was for a “solid service list” of local media record as described by the Chair of SOTF as existing. This was a part of a 2 year effort to get SOTF and other city bodies to comply with notification of Special Meetings (San Francisco Administrative Code, Section 67. (d)). The first attempt at an Immediate Disclosure Request (San Francisco Administrative Code, Section 67.25 (a)) to the SOTF for a “solid service list” of local media record was on January 28, 2022. No response from SOTF. After 10 days, February 7, 2022, a second Immediate Disclosure Request to the SOTF and included the SOTF Chair and Vice Chair because of the no response to the first request. The SOTF Chair told the SOTF Administrator to respond to the public record request as being voluminous, that it required additional days and when to respond. The SOTF Administrator knew the day after the public record request was made there was no “solid service list” of local media or any responsive record and told the SOTF Chair the next day.

On February 8, 2022, the SOTF Administrator e-mailed: “We are in receipt of the IDR and invoke a 10-day extension due to the voluminous nature of the information requested and need for any redactions as required or necessary.”

On March 1, 2022, the SOTF Administrator e-mailed, “The office of the Sunshine Task Force does not keep a list of local media for special meeting notice purposes.”

It took 32 days for SOTF to respond to this item that the SOTF Chair claimed the records existed, for them to say there is no record. Immediate Disclosure Request are to be made public by the end of the next business day.

The SOTF complaint File No. 22115 was against the SOTF Chair for obstructing a public record request by claiming the record request was voluminous for one list of local media required to be notified of special meetings. The SOTF on October 7, 2022. 453 days later, on January 3, 2024,

the SOTF found **Action: Moved by Member Hyland, seconded by Chair Yankee, to find no violation against former Chair Wolfe.**

In the discussion before the motion, the reasoning was because they found that the SOTF Administrator and the Sunshine Ordinance Task Force are in different “departments” and the complaint was filed against the wrong “department”. This is using “departments” and filing and the complaint form naming of the department to narrow public access and find no violations. The CPRA does not allow this. The “Local Agency” or “Agency” should be used. In the CPRA, there is no distinction between the city or county and the bodies that make them up. There is no requirement of the petitioner to get it right who and the what of violation (**San Francisco Administrative Code, Section 67.21 (e)**) A petitioner should not have to re-file a complaint just to get a “department” right and know all the San Francisco Sunshine Ordinance, the CPRA, or The Brown Act to get what the SOTF members think should be found. The refiling a complaint would be a waste of the SOTF time. There were clear violations of both the San Francisco Sunshine Ordinance and the CPRA in use of voluminous time extension and the time of the final response 31 days later, of no records. There was obstruction (**CPRA §7922.500**) and or “local agency may not allow another party to control the disclosure of information that is otherwise subject to disclosure pursuant to this division.” (**CPRA §7921.005**). Regardless of who or what the SOTF should find, their action should be to inform on the appropriate ways to implement of public access laws. (**San Francisco Administrative Code, Section 67.30 (c)**). The goal should not be solely to find violations, but to stop repeat violations. Finding no violation on narrow reasoning only opens the door to repeated violations and continued narrow reasoning. Similar complaints will be the SOTF considered this before and found no violation.

There was most likely a perceived power imbalance with the SOTF Administrator following the SOTF Chair’s instructions. During SOTF meetings, the SOTF Administrator follows the SOTF Chair’s instructions.

A petitioner not providing a government body or the wrong entity should not matter on a complaint form will be made more relevant in the jurisdiction part of this complaint and the SOTF needing to use the greater definitions of the San Francisco Sunshine Ordinance, the CPRA, and The Brown Act in this grand jury complaint. The SOTF boxing in the petitioner to what they wrote on the complaint form as far as department or commission or what law they think should apply is not a proper application of public access laws. The responsibility is on SOTF.

**Establishing Jurisdiction of an entity by SOTF is not needed or required by the San Francisco Sunshine Ordinance, only whether a public record or information is the government’s or a meeting fits the**

## **definition of formally or informally created by the government to further government policy.**

SOTF establishing jurisdiction of whether an entity is covered when gaining access to a public record does not matter. It matters more for meetings, but even the definition of covered entities in The Brown Act is very broad. Establishing who is the respondent to a complaint for attendance of a SOTF hearing does matter if a SOTF hearing is conducted concerning a records request denial by a government entity (**San Francisco Administrative Code, Section 67.21 (e)**).

SOTF has this whole process of establishing jurisdiction spelled out in its complaint procedure and hearings before the SOTF Complaint Committee, other SOTF committees, or the SOTF, which adds time to a SOTF determination. It is unnecessary to find jurisdiction for public records and information violations.

### **San Francisco Administrative Code, Section 67.21 Process for Gaining Access to Public Records; Administrative Appeals**

**(a) Every person** having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record)

### **CPRA §7921.005.**

“A state or local agency may not allow **another party** to control the disclosure of information that is otherwise subject to disclosure pursuant to this division.”

The fact that an entity can be “every person” and “may not allow another party to control the disclosure of information”, makes all entities are in jurisdiction of public access laws if they control or possess public records or information. “Every person” and “another party” do not have to be a city official. The only thing that matters is whether the records and information sought are covered by the San Francisco Sunshine Ordinance and the CPRA, not who holds them as a matter of jurisdiction. Cutting out the need to establish jurisdiction in a SOTF Complaint Committee hearing would greatly reduce the time for a SOTF determination.

On definition of meetings, the San Francisco Sunshine Ordinance adds passive meetings. The Brown Act definitions are much stronger in many respects. But in The Brown Act, “every person” and “may not allow another party to control the disclosure of information” entity broadness takes more work to get to the purpose of a body’s meetings are to “exist to aid in the conduct of the people’s business.” **The Brown Act § 54950**. The broadest definition is **The Brown Act § 54952 (c) (1)(A)**.

**The Brown Act § 54952 (c) (1)** “A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:

(A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.”

**Note: The Brown Act § 54952 (c) (1)** provision is use the word “elected”. **San Francisco Administrative Code, Section 67.3 (d) (3) and (4)** remove the word “elected” and would have a greater requirement on San Francisco, but the SOTF has narrowly interpreted them. The SOTF seems confused.

**San Francisco Administrative Code, Section 67.3 (d)** ““Policy Body" shall mean:”

(3) “Any board, commission, committee, or other body created by ordinance or resolution of the Board of Supervisors;”

(4) “Any advisory board, commission, committee or body, created by the initiative of a policy body;”

The words “other entity” is broad. ““Created” is seen by the courts to be both formal and informally as long as legislative body defined by The Brown Act ‘played a role’ in bringing [the body] ‘into existence.’” *Epstein, supra, 87 Cal.App.4th at p. 864*, quoting *International Longshoremen’s*. “Such entities should not be allowed to conduct the people’s business in private that are required to conduct them in public.”

From Opinion of ROB BONTA, Attorney General February 29, 2024,  
[https://oag.ca.gov/system/files/opinions/pdfs/22-402\\_0.pdf](https://oag.ca.gov/system/files/opinions/pdfs/22-402_0.pdf)

“Given the Brown Act’s public access purpose, we decline to read the term “created” in a narrow or hyper-technical manner so as to allow an individual to initiate the creation of a policy body—whose original and continued existence depends upon formal approval (and funding) action by one or more legislative bodies—such that it escapes the public access and scrutiny that the Brown Act would otherwise require.”

“But we must also “avoid interpretations and constructions which defy common sense or which might lead to mischief or absurdity, including literal meanings which would lead to a result not intended by the Legislature.” *Peters v. Superior Court* (2000) 79 Cal.App.4th 845, 849, internal quotation marks and citation omitted; see 64 Ops. Cal. Atty. Gen. 83, 85-86 (1981). A narrow construction of the word “create,” to mean only direct creation by an elected legislative body would invite evasion and subterfuge of the Act’s purposes. As noted earlier, the statute should be “construed liberally in favor of openness so as to accomplish its purpose and suppress the mischief at which it is directed.” *International Longshoremen’s*, *supra*, 69 Cal.App.4th at p. 294 “

“Indeed, subdivision (c)(1)(A) expressly refers to authority that may be lawfully delegated, which may necessitate a less than complete delegation—i.e., less than final authority or less than complete control. Cf., *Lehane v. City etc. of San Francisco* (1972) 30 Cal.App.3d 1051, 1054-1055 (complete delegation of legislative authority may be unconstitutional)”

“Nevertheless, Harris reported that “these laws were routinely flouted by simply labelling such meetings with other names—caucus, star chamber, executive session, committee-of-the-whole, pre-council meeting, work session, and study meeting. In this way, Bay Area councils and boards contrived to avoid the reach of the legislation and to conduct in private business that should have been conducted in public.” *Oakes & Killingley*, supra, at p. 7; see also *Sacramento Newspaper Guild v. Sacramento County Bd. of Sup’rs* (1968) 263 Cal.App.2d 41, 49-51 (discussing legislative history of the Act)

“Generally, an Attorney General opinion is not a mere ‘advisory’ opinion, but a statement which, although not binding on the judiciary, must be regarded as having a quasi judicial character and is entitled to great respect, and given great weight by the courts.” *Natkin v. California Unemployment Ins. Appeals Bd.* (2013) 219 Cal.App.4th 997, 1006 (omitting internal quotation marks and citations)

In San Francisco “benefit district formation groups”, the SOTF has yet to find these “other entities” as covered under The Brown Act even though they exist to implement benefit district laws in both state and city, **San Francisco Green Benefit District, Article 15 A, Ordinance 14-14**. In the previous cited SOTF complaint 18086 on jurisdiction that failed even though a majority voted in favor, was for the jurisdiction on a Green Benefit District Formation Group that all activities and meeting were paid for by the City of San Francisco, a Supervisor suggested one or two people for the group that were placed in the group, the city paid for consultants for the group for the purpose to implement **San Francisco Green Benefit District, Article 15 A, Ordinance 14-14** which would assess property owners for an entity the formation group would create in boundaries they drew, of which were approved by the San Francisco City Attorneys Office, the city would conduct a property weighted election, and the Board of Supervisors would approve, and the city would collect the assessment on property owners. This latter failed again in the SOTF to find that such Green Benefit Formation groups were required to follow The Brown Act. To my knowledge, the city has stopped creating and funding such benefit district formation groups.

For jurisdiction of meetings, the SOTF has to determine if the entity in question was created by a policy body in order to exercise authority that may lawfully be delegated by the governing body,

in this case, the city. The governing body had to just “play some role” in bringing the entity into being that is furthering the goal of the governing body.

The jurisdiction process is too drawn out, especially for gaining access to public records and information. This contributes to the SOTF violating **SF Sunshine Ordinance Administrative Code, Section 67.21 (e)** in 45 days for a SOTF determination.

## **SOFT Annual Report Criteria Allows to Show Success but Disallows for Failure from the Public. Better Public Input and Engagement should be Implemented.**

### **San Francisco Administrative Code, Section 67.30**

(c) “The task force shall advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter. The task force shall develop appropriate goals to ensure practical and timely implementation of this chapter. The task force shall propose to the Board of Supervisors amendments to this chapter. The task force shall report to the Board of Supervisors at least once annually **on any practical or policy problems** encountered in the administration of this chapter.”

On February 26, 2023, Mr. Peter Warfield, Executive Director, Library Users Association sent a public record request on SOFT Annual Report to SOTF member Laura Stein who was the main lead on putting together SOTF’s Annual Report. (**Exhibit L**). The e-mail exchange is a little hard to read as it goes from bottom to top and responses include previous words as reference to what they are responding to without designating who the words are attributed to. Page 2-3 of **Exhibit L** SOTF member Laura Stein responds: “Statements of problems are to be written by SOTF members, since that was the agreed upon process and SOTF is ultimately responsible for advising the Board of Supervisors. These are problems raised by cases in 2022 that a member feels should be addressed. If the statements are not endorsed by the SOTF as a whole at the next meeting, that member has the option to include their statement in the appendix or not at all. If you want to submit some problem statements to me, I can post them online for members to review and potentially adopt”. In including stories from the public, SOTF member Laura Stein responds “The agreed upon category of data was success stories, not failure stories. However, I do think failure stories could be useful. Perhaps they can be incorporated into future reports, presuming members agree to it.”

This petitioner was not able to find where SOTF “The agreed upon category of data was success stories, not failure stories.” or any action that affirms this.

The 2022 and 2023 Annual Reports include Practical and Policy Problems Encountered written by SOTF members.

SOTF actively solicits city departments and respondents by e-mailing them a survey. City departments and respondents are going to give information in a favorable light to them. The numbers of successful record request that city departments provide that are successful are suspect. This petitioner believes many record requests are routine. Success is in complying with public access laws, deadlines and all requirements. While success for a city official is if they fulfilled a request regardless of deadline or other areas that have been outlined in this complaint. This can be seen in all complaints brought before the SOTF. Rarely do city respondents think they have violated public access laws. This is partly because city officials misinterpret public access laws. This is where SOTF routinely fails to inform respondents during their hearings and actions. If many complaints were handled without hearing but were handled with a written action, SOTF could be better at addressing laws a city department or official has violated and possibly misunderstood a public access law(s). There are 3 major public access laws that are a spaghetti of words and provisions that are difficult to understand. Consistent application and providing “information to other City departments on appropriate ways in which to implement this chapter.” (**San Francisco Administrative Code, Section 67.30 (c)**) is key to better compliance with public access laws and reducing SOTF complaints. SOTF Annual Reports are also a means to address specific provisions that are routinely not complied with for whatever reasons and to spell out what is expected.

SOTF Annual Reports should track previous annual reports Practical and Policy Problems Encountered to state whether there has been any progress or resolution.

Page 4, **Exhibit L**, in regards to SOTF annual reports, SOTF member Laura Stein responds “There was no formal written solicitation to petitioners or members.” as there is for city departments and respondents.

This petitioner does not believe it would be hard after every complaint has been resolved by the full SOTF to send an e-mail out with a survey or link to the online survey to the petitioner. An e-mail with a survey or link to the online survey should be sent to the petitioner after a respondent found to require certain actions to comply with public access laws informs the SOTF of compliance. City department or officials who fulfill a public record request at the end should send the requester an e-mail with a survey or link to the online survey. This information can be shared with the city department and possibly the SOTF Annual Report. It would be another way to note problems and address them.



This petitioner believes if SOTF had fewer hours in hearings, more time resolving issues in a timely manner outside of hearings and resolving systemic public access issues, the city and the public would have better public access.

**Documents submitted to SOTF or any San Francisco city entity should be as clear as they were submitted and should be in a form that text and images can be copied and pasted. Public records require an “exact copy” under the CPRA §7922.530.**

SOTF complaint File No. 22115

[https://www.sfgov.org/sunshine/sites/default/files/sotf\\_010324\\_item10.pdf](https://www.sfgov.org/sunshine/sites/default/files/sotf_010324_item10.pdf) and SOTF complaint File No. 22116 [https://www.sfgov.org/sunshine/sites/default/files/sotf\\_010324\\_item11.pdf](https://www.sfgov.org/sunshine/sites/default/files/sotf_010324_item11.pdf)

There are many pages of where the text is unreadable and from the petitioner. Examples:

Complaint File No. 22115 pdf page 37 and pages around.

Complaint File No. 22116 pdf page 10 and pages around.

**Exhibit M** shows the pages (37 and 10) above as submitted and as produced by SOTF and in the agenda packets from the links above. The original records were submitted as pdf attachments to emails.

The documents were submitted clear text and not like it was sprayed with water and run through a scanner. The 2 complaints were against a SOTF member. Given other evidence that will be presented, these records were intentionally obscured by the SOTF Administrator. There should be no detriment to the petitioner or the public in viewing records submitted for an agenda item or for city officials at a meeting. I have seen inferior copies by the SOTF before, but these are probably the worst.

If you look at other complaints, as an example, SOTF complaint 22014

[https://www.sfgov.org/sunshine/sites/default/files/sotf\\_120722\\_item\\_8.pdf](https://www.sfgov.org/sunshine/sites/default/files/sotf_120722_item_8.pdf), from the December 7, 2022 agenda of the SOTF, you find the petitioners records and all records in the complaint are clear and allow copying and pasting of text. It is clear that when manipulation of agenda items, agenda and minutes happen, they are intentional.

Since these are public records, the obscuring of records and information would be an obstruction and without a law cited by the city to redact the information. The altering of documents submitted by the public violates **CPRA §7922.500** “obstruct the inspections or copying of public records”. and **CPRA Article 1 Justification for Withholding San Francisco Administrative Code, Section 67.26 “Withholding Kept to A Minimum, Section 67.7 Justification of Withholding. CPRA §7922.530 (a) “an exact copy”**.

It appears that the SOTF Administrator printed out digital documents of a petitioner and ran them through a scanner and created an image that was put into a pdf. This causes a public record submitted to be degraded in quality from the original, which is a public record. This makes the records non-searchable by search engines or allows the copying of the text of a record to paste elsewhere by anyone wish to do so. The respondents' records are searchable in these two complaints and you have the ability to copy text from the pdf. As in the example: SOTF complaint File No. 22115

[https://www.sfgov.org/sunshine/sites/default/files/sotf\\_010324\\_item10.pdf](https://www.sfgov.org/sunshine/sites/default/files/sotf_010324_item10.pdf) Respondent record section starts on pdf page 48 or SOTF package page 046.

**San Francisco Administrative Code, Section 67.21-1**

(b) “Departments purchasing new computer systems shall attempt to reach the following goals as a means to achieve lower costs to the public in connection with the public disclosure of records:”

(2) “Implementing a system that permits reproduction of electronic copies of records in a format that is generally recognized as an industry standard format.”

A scanned text image copy in pdf form of a submitted digital text file is not a recognized as an industry standard format now, if it ever was ever.

The current alteration by the government of records submitted in digital form by re-scanning the records violates public access laws. The government can not dictate the presentation of records in one form of copy (an image) and different from how it was submitted. It cannot degrade the presentation of records and records submitted for agenda item, as correspondence, or for any issue of consideration by the government. An image of a text document is a degrading of the original document. Public access laws also required that any portion of a record be able to be copied and must be an “exact copy” **CPRA §7922.530.**

. “A statute, court rule, or other authority, shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access.” **CA Constitution Article 1, Section 3 (b) (2)**

To support the above paragraphs points:

**San Francisco Administrative Code, Section 67.7.**

(b) “It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda.”

**The Brown Act §54957.5.** specifically says any other meeting items and all meeting records are subject to the CPRA unless the writing is exempt under certain CPRA sections

(a) “Notwithstanding Section 6255 or any other law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at an open meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, 6254.22, or 6254.26.”

**San Francisco Administrative Code, Section 67.21 (k)** gives a similar but more general requirement “that documentary public information” must follow the CPRA.

(k) “Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.”

**San Francisco Administrative Code, Section 67.21 (l)** allows the public to “requesting the information in any form requested which is available to or easily generated” not the government.

(l) “Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees,”

**CPRA §7920.530.** records can be any writing containing information and not the whole record.

(a) “As used in this division, “public records” includes any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”

“Writing” in the definition of the “public record” **CPRA §7920.530.**

**CPRA §7920.545.**

“As used in this division, “writing” means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation,

including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.”

**CPRA §7922.530.**

(a) “Upon request, **an exact copy** shall be provided unless impracticable to do so.”

The requirement of “an exact copy” is not in the San Francisco Sunshine Ordinance, so CPRA wording is a greater requirement.

**CPRA §7922.500.**

“Nothing in this division shall be construed to permit an agency to delay or **obstruct the inspection or copying of public records.**”

Since a public record can be a portion of “any writing containing information”, the producing of writing as an image and not copyable text obstructs the copying of that writing limiting public access to “an exact copy”. It is also the government limiting the form of a digital record that was given to them digitally (available) so is easily generated by the department, its officers or employees. Digital documents and writings submitted by the public are usually through e-mail attachment, uploaded, or through a form. E-mails and attachments are another record that must be retained.

If the legislature meant copying to be only the entire record by pages, they would have stated so.

SOTF Complaint File No. 19098 - Anonymous v San Francisco Police Department. SOTF unanimous found of violation for unlawfully withholding text message metadata (including the to/from/etc. - note SFPD had provided the dates and times), and also for unlawfully printing and scanning electronic records which do not constitute a "copy" of an electronic record.

Prior relevant SOTF complaints by Anonymous File No. 3 File No. 19044, File No. 19047, File No. 19091, File No. 19098, File No. 19103, and File No. 19108 ruled against the City for email, text messages, past and future calendar entries, meeting details, electronic metadata, and attachment. Anonymous #3 did a lot of work trying to get copies of electronic records, specifically the metadata with the records.

The SOTF scanning submitted public records violates their own ruling actions on other city department and bodies as presented above.

The **CPRA §7922.530.** “an exact copy shall be provided **unless impracticable to do so.**” In order to print out a digital record submitted by the public to make an image of it, the government must open the digital record, so any concern over a virus or malware must be being taken care of

now. You can use an antivirus or anti-malware program that scans your attachments automatically or on demand. This petitioner is sure the city does this. Even if there is some crazy reason that records must be scanned, today's scanners and software can provide clear, optical character recognition, and text that can be copied and pasted and searched. There is no reason that a petitioner's records can not have the same accessibility as the respondents or any other government record.

**Note: CPRA §7922.530.** allows a requester (*should be respondent*) to make a copy of a record but not damage it. While not stated in the CPRA that this would apply to a government official or employee, it would follow that an agency can not make a copy of a record and damage that record during reproduction.

**CPRA §7922.530.**

(b) "A requester who inspects a disclosable record on the premises of the agency has the right to use the requester's equipment on those premises, without being charged any fees or costs, to photograph or otherwise copy or reproduce the record in a manner that does not require the equipment to make physical contact with the record, unless the means of copy or reproduction would result in either of the following:

(1) Damage to the record."

## **Notification of Meetings in the City of San Francisco**

For several years, Mr. Chaffee and Mr. Warfield have submitted a written yearly request to receive the SOTF "agendas and copy of all the documents constituting the agenda packets" under **The Brown Act §54954.1**. The SOTF has ignored these requests. This petitioner believes Mr. Chaffee has given up. Mr. Warfield has made a number of public comments at full SOTF meetings asking why he is being denied his request. Nothing has happened. The law has its own section in The Brown Act. Until the law is changed, it should be followed. The SOTF needs to be an exemplary example of the application of all public access laws.

**The Brown Act §54954.1.**

"Any person may request that a copy of the agenda, or a copy of all the documents constituting the agenda packet, of any meeting of a legislative body be mailed to that person. If requested, the agenda and documents in the agenda packet shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Upon receipt of the written request, the legislative body or its designee shall cause the requested materials to

be mailed at the time the agenda is posted pursuant to Section 54954.2 and 54956 or upon distribution to all, or a majority of all, of the members of a legislative body, whichever occurs first. Any request for mailed copies of agendas or agenda packets shall be valid for the calendar year in which it is filed, and must be renewed following January 1 of each year. The legislative body may establish a fee for mailing the agenda or agenda packet, which fee shall not exceed the cost of providing the service. Failure of the requesting person to receive the agenda or agenda packet pursuant to this section shall not constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda or agenda packet was not received.”

For 2 years, Mr. Sullivan tried to get an e-mail notice of special meetings of the SOTF (**San Francisco Administrative Code, Section 67.6 (f)**). The original request was on a February 1, 2021 in an e-mail to SOTF. The request was submitted after being unaware that a special meeting of the SOTF had happened on January 12, 2021. Notification of special meetings “shall be at least 24 hours before the time of the meeting as specified in the notice.” (**The Brown Act §54956**) The San Francisco Sunshine Ordinance adds some greater requirements and more open notification.

**San Francisco Administrative Code, Section 67.6 (f)**

(f) “Special meetings of any policy body, including advisory bodies that choose to establish regular meeting times, may be called at any time by the presiding officer thereof or by a majority of the members thereof, by delivering personally or by mail written notice to each member of such policy body and the local media who have requested written notice of special meetings in writing. Such notice of a special meeting shall be delivered as described in (e) at least 72 hours before the time of such meeting as specified in the notice. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the presiding officer or secretary of the body or commission a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Each special meeting shall be held at the regular meeting place of the policy body except that the policy body may designate an alternate meeting place provided that such alternate location is specified in the notice of the special meeting; further provided that the notice of the special meeting shall be given at least 15 days prior to said special meeting being held at an alternate location. This provision shall not apply where the alternative meeting location is located within the same building as the regular meeting place.”

**San Francisco Administrative Code, Section 67.6 (f)** uses the word “local media” and Mr. Sullivan was asking for notification as a local media website <https://sfneighborhoods.net> which works to make government available to the public with a special emphasis on public access laws and the public's use of them.

**The Brown Act §54956.5. (b) (2)** “Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956” uses more specific newspaper, radio and television station than “local media”. Mr. Sullivan argued with the SOTF multiple times that the word media is broad and can include websites, bloggers (there are court cases outside of CA that reaffirm this) and you have social media, educational media, etc.

On January 25, 2022, the SOTF had a special meeting they called a “Retreat” ([https://www.sfgov.org/sunshine/sites/default/files/sotf\\_012522\\_agenda.pdf](https://www.sfgov.org/sunshine/sites/default/files/sotf_012522_agenda.pdf)) The SOTF had referred to a “retreat” at their December 1, 2021 meeting. The public thought they were going on some sort of team building retreat. No notice of the special meeting was given to Mr. Sullivan before the meeting occurred. Mr. Sullivan only found out that the “retreat” was a special meeting an hour before the special meeting. This was because a member of the public had attended a SOTF committee meeting that afternoon and had heard about some sort of SOTF meeting starting at 6:30 PM that day. It is obvious that the SOTF used the word “Retreat” instead of “special meeting” to keep the public from attending. There is no other possible reason.

On March 15, 2022, Mr. Sullivan filed a complaint with the San Francisco Ethics Commission against the SOTF for not adhering to the **San Francisco Administrative Code, Section 67.6 (f)** “special meeting” notification. This was rejected by the Ethics Commission as not having “jurisdiction over this matter because SOTF is not a department and therefore then Chair Bruce Wolfe is not a department head.” This Ethics Commission complaint and response can be found here: [https://www.sfgov.org/sunshine/sites/default/files/sotf\\_080322\\_item3A.pdf](https://www.sfgov.org/sunshine/sites/default/files/sotf_080322_item3A.pdf)

At the SOTF August 3, 2022 meeting, agenda Item 3A, SOTF discussed this and noted that “Member Wolfe noted that as far as an official complaint, there is no other body in the City to take up this complaint except in court. Member Wolfe also stated that the SOTF should review it, but upon reflection of item in the complaint and how to make things work better, it should not take this matter on as a complaint and adjudicate it” ([https://www.sfgov.org/sunshine/sites/default/files/sotf\\_080322\\_minutes.pdf](https://www.sfgov.org/sunshine/sites/default/files/sotf_080322_minutes.pdf)) Audio/Transcript found here starting at the 36:46: <https://www.youtube.com/watch?v=1KavJcCPveY>

Note: The SOTF has no formal process for the public to petition the SOTF other than a complaint. Formal e-mail for notification of “special meetings” was still not working. Complaining during public comment did nothing.

On September 11, 2023, Mr. Sullivan filed a complaint (SOTF complaint File No. 23974) against the SOTF for violating **San Francisco Administrative Code, Section 67.6 (f)** special meeting notification for special meetings held 1/25/2022, 6/7/2022, 6/13/2022, 7/25/2023 and 8/22/2023. The complaint has never been heard and there is no public SOTF link to the complaint.

Also on September 11, 2023, Mr. Sullivan filed a complaint to the Mayor (Mayor Breed) under **San Francisco Administrative Code, Section 3.100** “The Mayor shall enforce all laws relating to the City and County, and accept service of process on its behalf”., **San Francisco Administrative Code, Section 3.100 3**. “Receipt and examination of complaints relating to the administration of the affairs of the City and County, and timely delivery of notice to the complainant of findings and actions taken;”, **Article IV Executive Branch – Board, Commissions and Departments, and San Francisco Sunshine Ordinance Sec 67.35 (d)**.

This complaint to the Mayor was given to the San Francisco Clerk of the Board of Supervisors Office. On October 23, 2024, the San Francisco Clerk of the Board of Supervisors Office started a list for notification of special meetings for all San Francisco commissions, boards, task forces, etc. The notification list is open to any member of the public and not just “local media”. A person or “local media” only needs to send a request e-mail to the [Board.of.Supervisors@sfgov.org](mailto:Board.of.Supervisors@sfgov.org) or notify any San Francisco Board of Supervisor clerk to be put on the notification list. This is not well publicized or known.

The SOTF upon learning that there was now a list for notification of special meetings, was surprised. The point of all this, the SOTF was given many opportunities to take the initiative and have them and the city of San Francisco adhere to the **San Francisco Administrative Code, Section 67.6 (f)**, but did not. The SOTF whole reason of existence is to enforce the San Francisco Sunshine Ordinance, public access laws, and protect the public's interest in open government. (**San Francisco Administrative Code, Section 67.1 (e)**). They fail even on this easy requirement in apply the San Francisco Sunshine Ordinance.

Note on Complaints to the Mayor: These provisions are not well known. I have submitted 4 complaints to the Mayor under these provisions. 3 of the complaints have been acted on. The complaint not acted on has not received a “timely delivery of notice to the complainant of findings and actions taken;” **San Francisco Administrative Code, Section 3.100 3**. even with a follow up e-mail requesting one. The 3 acted on also did not get a “timely delivery of notice to the complainant of findings and actions taken;” **San Francisco Administrative Code, Section 3.100 3** from the Mayor’s Office but caused actions to take place to address the issues. San Francisco Clerk of the Board of Supervisors Office findings and action taken on the special meeting notifications could be taken as a notice from the Mayor’s Office.



Lastly, **The Brown Act §54957.1 (b)** for a closed session uses the words “to **any person** who has made a standing request for all documentation as part of a request for notice of meetings” instead of naming media. **The Brown Act §54954.1** also uses “any person” for notification of meetings. The full text of **The Brown Act §54954.1** is at the beginning of this section of the grand jury complaint. A broad interpretation for greater public access would extend this to notify any person of any meeting, closed or not.

(a) “The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention on that action of every member present, as follows:”

(b) “The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session.”

### **All SOTF complaints should have a direct link to the complaint that are accessible to the public.**

Currently, SOTF complaints can only be accessed by the public if they are an agenda item on a SOTF Committee or the full SOTF agenda. A petitioner and the public have access to the complaint’s documents about 72 hours before the complaint hearing when the agenda is made public. This 72 hours before a hearing viewing by the public and the petitioner includes any new documents that the respondent (the city) has included. The respondent gets the complaint and the petitioner’s documents shortly after a complaint has been filed against them. It appears that at least some or all city respondents have access to the complaint’s documents via a link at all times. This is unfair to the petitioner and the public. This was realized by Mr. Sullivan during a hearing in an exchange between the SOTF Administrator Ms. Leger and Department of Public Works, Mr. Steinberg.

Public Comment and e-mail comment have been made to the SOTF that this is unfair access to the petitioner.

### **San Francisco Administrative Code, Section 67.21-1**

(a) “It is the policy of the City and County of San Francisco to utilize computer technology in order to reduce the cost of public records management, including the costs

of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this section. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall program and design these systems to ensure convenient, efficient, and economical public access to records and shall make public records easily accessible over public networks such as the Internet.”

#### **San Francisco Administrative Code, Section 67.29-2 Internet Access/World Wide Web Minimum Standards**

.....”Each department is encouraged to make publicly available through its World Wide Web site, as much information and as many documents as possible concerning its activities.”..

Both of the above San Francisco Administrative Code would support the complaints being made public from inception with **San Francisco Administrative Code, Section 67.21-1** using the word “shall”; “shall program and design these systems to ensure convenient, efficient, and economical public access to records and shall make public records easily accessible over public networks such as the Internet.” It is technologically possible, transparent and fair.

It is important to remember that the San Francisco Sunshine Ordinance was written in 1999, when the word “encouraged” in **San Francisco Administrative Code, Section 67.29-2**.

There is no reason that the SOTF can not make all complaints they receive public with a permanent link. This is also a matter of fairness of public access and due process for the petitioner versus the city respondent’s access.

**San Francisco Administrative Code, Section 67.21-1 encourages the city to implement a system for automatically “disclosing records subject to disclosure to members of the public” and no legal requirement to use NextRequest a for profit company to take public record requests. All city agencies must comply with the San Francisco Administrative Code, Section 67.21 (a) (b) and take record requests in person, by e-mail, by fax, or by postal delivery.**

**San Francisco Administrative Code, Section 67.21-1**

(a) “It is the policy of the City and County of San Francisco to utilize computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this section. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall program and design these systems to ensure convenient, efficient, and economical public access to records and shall make public records easily accessible over public networks such as the Internet.”

(b) “Departments purchasing new computer systems shall attempt to reach the following goals as a means to achieve lower costs to the public in connection with the public disclosure of records:”

(1) “Implementing a computer system in which exempt information is segregated or filed separately from otherwise disclosable information.”

(2) “Implementing a system that permits reproduction of electronic copies of records in a format that is generally recognized as an industry standard format.”

(3) “Implementing a system that permits making records available through the largest non-profit, non-proprietary public computer network, consistent with the requirement for security of information.”

San Francisco partially does this with data <https://datasf.org/opa/>, which is “non-profit, non-proprietary public computer network”. The San Francisco Office of the Controller does this with SF OpenBook <https://openbook.sfgov.org/> with revenue and contracts. There is no reason that a searchable database cannot be done with all San Francisco records. Depending on implementation, this could cut down public record request, the time required and people to respond to public record requests sometimes for the same records and it could save money.

NextRequest (<https://sanfrancisco.nextrequest.com/>) used by some city department to take public record request is a for-profit company. It allows you to search request titles but not actual records or words in a record. This means if a record appears in a request without the keywords in your search in the request title, that record will not be found. You have to make a record request to make sure you have found all the disclosable records. NextRequest cost the city money and lacks search ability of records.

All city agencies **must comply** with the **San Francisco Administrative Code, Section 67.21 (a) (b)** and take record requests in person, by e-mail, by fax, or by postal delivery. San Francisco city entities cannot require the use of NextRequest though they can post request on NextRequest

and respond to a request in person, by e-mail, by fax, or by postal delivery. Many of the city departments using NextRequest make it hard or impossible to have a public record request given to them outside NextRequest, like providing no e-mail address for public record request. There are many reasons public record requester would not want to make a request on NextRequest.

### **San Francisco Administrative Code, Section 67.29-2 Internet Access/World Wide Web Minimum Standards**

....."Each department is encouraged to make publicly available through its World Wide Web site, as much information and as many documents as possible concerning its activities."..

With **San Francisco Administrative Code, Section 67.21-1** and **San Francisco Administrative Code, Section 67.29-2**, the voters of San Francisco have asked that as many documents as possible be preemptively put on the internet in a searchable way in order to make the business of the city transparent.

### **The path to bringing a public access law complaint to court favors the city.**

Similar to the San Francisco Civil Grand Jury request to resolve issues directly with relevant city agencies or officials, California courts have a more ridged requirement in "the exhaustion of administrative remedies doctrine" or "judicial exhaustion" (**Cal. Civ. Proc. Code § 1094.5(a)**). "If an administrative remedy is provided by statute, it must be invoked and exhausted before e judicial review of administrative action is available." (*Ralph's Chrysler-Plymouth v. New Car Dealers Policy & Appeals Bd.* (1973) 8 Cal.3d 792, 794.) The decision-making body "is entitled to learn the contentions of interested parties before litigation is instituted." (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 384.) Thus, exhaustion requires a full presentation to the administrative agency of all issues later to be litigated and the essential facts on which the issues rest. (*City of San Jose v. Operating Engineers Local Union No. 3* (2010) 49 Cal.4th 597, 609.)

### **San Francisco Administrative Code, Section 67.21**

(f) "The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for

inspection or copy of a public record or with an administrative order under this section, the superior court shall have jurisdiction to order compliance.”

So note **San Francisco Administrative Code, Section 67.21 (f)** “in any way limit the availability of judicial remedies otherwise available to any person **requesting a public record**” and not any violation to public access laws regarding meetings. Even given the San Francisco Sunshine Ordinance “in any way limit the availability of judicial remedies”, “the exhaustion of administrative remedies doctrine” says otherwise. One of the major provisions of the San Francisco Sunshine Ordinance is the creation of the San Francisco Sunshine Ordinance Task Force (SOTF). The petitioner knows of no court case involving the city of San Francisco public records or meetings, and going through the SOTF or jumping past SOTF to the Superior Court of California. It would seem unlikely that you would not be required to go through the SOTF first and it would likely be costly if you do not.

The SOTF complaint procedures slow down any resolution to an average of 407 days for a determination on SOTF complaints (**2023 SOTF Annual Report**). Even if you win the determination, you may not get the records and little chance in the 5 days required by **San Francisco Administrative Code, Section 67.21 (e)** because of poor SOTF follow up and enforcement of after their determination. It is even more dire for public access to meetings. 407 days since a violation(s) is really stale. The government meetings often continue violating public access laws and enforcement does not exist. Then the finding of lawyers and costs of bringing a court case. Most of the public can not afford the time and money. The situation is a blow to “The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy” **San Francisco Administrative Code, Section 67.1 (d)**.

Should a petitioner take their complaint to court, they face a city with a City Attorney’s Office with many attorneys and large resources in the taxpayers' money. It is ironic that the City Attorney’s Office job is to defend city officials and employees if there is a question of public access or to prevent the public’s right to know with the public’s money. The city also can appeal with the public’s money.

If the petitioner prevails over the city, **San Francisco Administrative Code, Section. 67.35 Enforcement Provisions**

(b) “A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought to enforce this Ordinance.”

(c) “If a court finds that an action filed pursuant to this section is frivolous, the City and County may assert its rights to be paid its reasonable attorneys' fees and costs.”

Also see **CPRA 7923.115**, and **The Brown Act § 54960.1** and **§54960.2**

The “poison pill” of **The Brown Act § 54960.1**

(e) “During any action seeking a judicial determination pursuant to subdivision (a) if the court determines, pursuant to a showing by the legislative body that an action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 has been cured or corrected by a subsequent action of the legislative body, the action filed pursuant to subdivision (a) shall be dismissed with prejudice.”

(f) “The fact that a legislative body takes a subsequent action to cure or correct an action taken pursuant to this section shall not be construed or admissible as evidence of a violation of this chapter.”

**The Brown Act §54960.2 (c)**

(3) “An action shall not be commenced to determine the applicability of this chapter to any past action of the legislative body for which the legislative body has provided an unconditional commitment pursuant to this subdivision. During any action seeking a judicial determination regarding the applicability of this chapter to any past action of the legislative body pursuant to subdivision (a), if the court determines that the legislative body has provided an unconditional commitment pursuant to this subdivision, the action shall be dismissed with prejudice. Nothing in this subdivision shall be construed to modify or limit the existing ability of the district attorney or any interested person to commence an action to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body.”

With The Brown Act, if the legislative body cures the violation “during any action seeking a judicial determination” “the action filed pursuant to subdivision shall be dismissed with prejudice” and the cost to the petitioner is borne by the petitioner.

There are no penalties above court cost to the city (taxpayer money) and no penalty of officials or employees.

Public access relies on city officials and employees doing the right thing. If not, the SOTF and the Ethic Commission applying the San Francisco Sunshine Ordinance, the CPRA and The Brown Act closely are required.

A couple of suggestions:

If the SOTF determines in favor of the petitioner and the city does not comply in 5 days for records or for meeting violations, and the timeline outlined The Brown Act (explained in the next paragraph), a petitioner can file a court case and the city's taxpayers' money pays the court cost however it gets resolved. This should spur action and city officials to consider the importance of the public's right to know and hopefully lessen withholding. It would align the government's business with their obligation to inform the public. This would require an ordinance.

The San Francisco Sunshine Ordinance meeting provisions only add greater requirements but do not spell out actions or a timeline the SOTF can do if a violation(s) is found. Since this is an inconsistent requirement under the San Francisco Sunshine Ordinance, the Brown Act remedies should apply. **San Francisco Administrative Code, Section 67.5.** The SOTF requirement to enforce and the public's interest in open government (**San Francisco Administrative Code, Section 67.1 (e)**) and should "make a demand of the legislative body to cure or correct the action" "The demand shall be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation." **The Brown Act § 54960.1 (b)** "cease and desist letter by postal mail or facsimile transmission to the clerk or secretary of the legislative body being accused of the violation" **The Brown Act § 54960.2 (a)(1)** and to follow the various cure and correction requirements outlined in **The Brown Act § 54960.1** and **The Brown Act § 54960.**

## **The San Francisco Sunshine Ordinance and the SOTF Act as a Shield for the City without Full Implementation**

When the SOTF is not functioning on all cylinders, and public access laws are not followed to their full extent of allowing full participation and transparency for the public, the San Francisco Sunshine Ordinance acts as a shield for the city and city officials from state and city public access law accountability. The SOTF and the San Francisco Sunshine Ordinance can give a facade of greater public access requirements but it creates an internal city quasi-judicial system that is manipulated by the city to the overall benefit of officials controlling public access to government. The manipulation, intentional and not by city policies, creates delay, unfair the SOTF voting requirements, and lack of accountability and enforcement of public access laws, a death of a thousand cuts. This favors the city and City Attorney's Office objectives. Many meetings and public record request are handled well, but it is the contentious issues or things city officials and employees want to keep hidden from the public view that benefit from any dysfunction and delay. In recent years, the city has a history of scandals that get reported, but this does not include those near scandals or violations of the San Francisco Sunshine Ordinance, the CPRA and The Brown Act of the people's rights to know.

With an average of 407 days to resolve a complaint (**2023 SOTF Annual Report**), a required 6 vote majority in the positive of all seats on SOTF regardless of vacancy or not present at a meeting, SOTF forced to have hearings and vote on all petitions as substantive matters, little compliance or enforcement with within 5 days after a SOTF determination, Ethics Commission ignoring sunshine enforcement provisions, abuse of incremental and “rolling basis” clause, not following the greater requirements in the CPRA and The Brown Act, not following meeting notice requirements in The Brown Act, ethic law compliance and accountability “conflict of interest” problems, direct links to complaints for petitioners, manipulated documents and agenda items, these favor city officials and not the public.

The following is not a knock on the City Attorney’s Office as they are doing the role stated in the **San Francisco Administrative Code, Section 6.102(4)**. The following is just stating the facts of how the City Attorney’s Office role applies to the people’s right to know and public access. Suggestions follow.

“As to the idea that the city attorney can fulfill the same role as an inspector general, adds Harrington, “as much as I love them, they’re a political group.” Harrington was the city controller from 1991 to 2008. <https://missionlocal.org/2024/09/whos-afraid-of-the-inspector-general-peskin-pushes-anti-corruption-reform-measure/>

They do not, without exception, enforce the law on city officials. They interpret city codes and the law favorable to the city's current politics and keeping the government out of court. They advise city officials. The City Attorney’s Office’s mission and responsibility do not align with safeguarding the public's interests.

### **Our Mission**

“The mission of the San Francisco City Attorney’s Office is to provide the highest quality legal services to the Mayor, Board of Supervisors, and other elected officials as well as to the approximately 100 departments, boards, commissions and offices that comprise the City and County of San Francisco’s government.”

<https://www.sfcityattorney.org/aboutus/theoffice/>

It can be argued if the city attorneys actually enforced city officials to follow all public law and the **CA Constitution Article 1, Section 3 (b) (2)**

“A statute, court rule, or other authority, shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access.”

than San Francisco City Attorney’s Office and the people’s right of access would align more and both goals would be met.



“Not one, but two 10-minute recesses were required to reach this consensus. As the supes filed out of sight, were they violating the Brown Act, which forbids elected officials from doing public business in private?

“As you know, in conjunction with the Clerk’s Office, we regularly advise the Board of Supervisors and other City bodies on the Brown Act,” wrote City Attorney David Chiu. That’s not exactly a resounding “no.””

<https://missionlocal.org/2023/01/san-francisco-board-president-shamann-walton-connie-chan-rafael-mandelman/>

This was a violation of **The Brown Act §54952.2 (b)**

(1) “A majority of the members of a legislative body **shall not**, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.”

The San Francisco Sunshine Ordinance has no provision that states this. Another example of The Brown Act being greater than the San Francisco Sunshine Ordinance.

And

**The Brown Act §54950**

“In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.”

An attorney is assigned by the City Attorney’s Office to act as a legal advisor and advocate for the SOTF (**San Francisco Administrative Code, Section 67.30 (a)**). This attorney’s client is the SOTF and the public can not know what legal advice and work product are given to SOTF members. The SOTF is also a city entity, with SOTF members being city officials. This petitioner does not doubt that there is an ethical wall between the assigned SOTF city attorney and the City Attorney’s Office, but the paycheck is still coming from the City and if the SOTF had a complaint filed against it in court, the City Attorney’s Office would defend the SOTF. SOTF members are approved by the Board of Supervisors. From outside observation, the SOTF complaint procedures and many of the complaint items in this complaint, the SOTF and the SOTF attorney’s interest do not fully align with the public’s right to know what their government is doing in their name.

This petitioner suggests that the SOTF counsel be outside of government and be capable of representing the SOTF in case of court cases. This outside counsel's legal advice and work

product for the SOTF all be public. This SOTF counsel would be paid for by the city's taxpayer money. This would require a change in the San Francisco Administrative Code.

Another suggestion to repeat is if the SOTF determines that the city's argument of an exemption is not valid and that the records, information are still by default public, the city does not make them public within 5 days and there is no enforcement mechanism or it fails, Ethics Commission or other municipal office with enforcement powers, then the petitioner can file a court case in the Superior Court of San Francisco on the city's dime, win or lose in the court. This would also go public meeting compliance that is not corrected. If a violation of public access meeting laws occurs that affects the outcome of an issue, that issue must be reheard with all corrective measures in place. This would give teeth to public access laws and the SOTF in San Francisco. This should cause greater compliance with public access laws from the outset. This would require a change in the San Francisco Administrative Code.

We, the taxpayers, are paying for all this, yet we have no one making sure of our interests in an open and public process of our city government. District Attorneys and Attorney General not interest. (**San Francisco Administrative Code, Section 67.21 (d) and (e)**) Ethics Commission not interested. The SOTF hampered by themselves and some questionable actions, city officials and city policies combine to create a hostile state for the public's right to access in San Francisco.

San Francisco Administrative Code, Section 67.1

(e) "Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force, can protect the public's interest in open government."

This is not happening.

Up until a couple of years ago, the SOTF old complaint procedures had in its heading "Consistent with the language and spirit of the San Francisco Sunshine Ordinance (Ordinance) to provide the most open government possible (see City Administrative Code, Section §67.1, all inferences and evidence shall be viewed in the light most favorable to the petitioner." In their recent updating of their complaint procedures, the SOTF got rid of this.

# Exhibit A page 1

## **SOTF Annual Report Links and Quotes of Rate of Resolution of Pubic Access Conflicts**

All SOTF Annual Reports in this section of this document can be downloaded here:

<https://www.sfgov.org/sunshine/documents>

### **2003 SOTF Annual Report**

<https://www.sfgov.org/sunshine/Modules/ShowDocument.aspx?documentid=18243>

“The Administrator for the Task Force receives and answers questions regarding the Sunshine Ordinance and questions regarding the filing of complaints before the Task Force. The majority of questions to the Task Force Office regarding public records and the filing of complaints are handled at the Task Force Office.

Those that cannot be resolved are forwarded to the Complaint Committee and then to the Task Force.

This year there were 1000+ informational calls and emails to the Sunshine Ordinance Task Force Office from community persons requesting assistance in obtaining public records from a variety of City/County Departments.

Note 2002: 1100+ informal calls and emails ( <https://www.sfgov.org/sunshine/annual-report-2002>)”

### **2004 SOTF Annual Report**

([https://www.sfgov.org/sunshine/sites/default/files/FileCenter/Documents/18242-annual\\_report\\_2004.pdf](https://www.sfgov.org/sunshine/sites/default/files/FileCenter/Documents/18242-annual_report_2004.pdf))

“Proactive measures in resolving conflicts have resulted in a decline of complaints being filed.”

“Responded to a total of 2,739 public inquiries. 100% of Sunshine Requests were processed within 5 days.

- There was a decrease of complaints filed in 2003 from 29 to 25 complaints in 2004. This is a result of proactive measures taken in resolving conflicts.

(3) Complaint Committee: If the efforts of the Administrator and the Deputy City Attorney fail to obtain the information to which a petitioner is legally entitled, the matter will be referred to the Complaint Committee to determine jurisdiction. This language continues 2004, 2005, 2006-2007, and 2008 Annual Reports.”

### **2005 SOTF Annual Report**

([https://www.sfgov.org/sunshine/sites/default/files/FileCenter/Documents/18241-annual\\_report\\_2005.pdf](https://www.sfgov.org/sunshine/sites/default/files/FileCenter/Documents/18241-annual_report_2005.pdf))

## Exhibit A page 2

“Responded to a total of 2,551 public inquiries. 100% of Sunshine Requests made to the Task Force were responded to within 5 days.”

### **2006-2007 SOTF Annual Report**

(<https://www.sfgov.org/sunshine/sites/default/files/FileCenter/Documents/18235-SOTF%20Annual%20Report%20Final%204-24-08.pdf>)

“The SOTF administrator responded to a total of 5,948 public inquiries.

One hundred percent of sunshine requests made to the Task Force were responded to within five days. Forty-two potential complaints were resolved through mediation initiated by the SOTF administrator.”

### **2009-2010 SOTF Annual Report**

(<https://www.sfgov.org/sunshine/sites/default/files/FileCenter/Documents/36964-Final.pdf>)

“It is important to note that the number of complaints that the Task Force Administrator receives is substantially higher than the number of complaints that goes to the Task Force for adjudication. This is because the Administrator is often able to bring the parties in interest together for satisfactory clarification and resolution.”

**Note:** This language continues 2010-2011. 2012-2014, 2014-2016

### **2012-2014 SOTF Annual Report**

(<https://www.sfgov.org/sunshine/sites/default/files/FileCenter/Documents/50569-SOTF%202012-14%20Annual%20Report%20FINAL.pdf>)

“The biggest issue is handling the sheer volume of complaints filed with the Task Force. Even though many complaints are resolved with mediation, there is still a backlog of complaints due to a party’s unwillingness to mediate or when mediation is not successful. This backlog is the biggest issue before the Task Force.

Discussions are also underway to implement creative and effective ways to reduce the backlog and comply with the 45-day rule to hear complaints.”

### **2022 SOTF Annual Report**

([https://sfgov.org/sunshine/sites/default/files/2022\\_SOTF\\_Annual\\_Report\\_Final-11.pdf](https://sfgov.org/sunshine/sites/default/files/2022_SOTF_Annual_Report_Final-11.pdf))

“Timeliness and Efficiency of Complaint Processing”

“Petitioners whose complaints were heard by the full task force in 2022 had waited a mean of 227 days and a median of 201 days before attending their first scheduled hearings.” Because of the wording it is hard to tell if these numbers are from complaints filed in 2022 or include all

## Exhibit A page 3

complaints filed before 2022. Further down in the report its states: “As of Jan. 1, 2022, the task force had a backlog of 187 unresolved complaints.”

### **2023 SOTF Annual Report**

([https://sfgov.org/sunshine/sites/default/files/2023\\_Annual\\_Report\\_FINAL\\_20240410.pdf](https://sfgov.org/sunshine/sites/default/files/2023_Annual_Report_FINAL_20240410.pdf))

#### “Timeliness and Efficiency of Complaint Processing”

“Because only the full SOTF can make definitive determinations at present, we focused exclusively on cases that were scheduled for hearing before the full SOTF.”

“None of the cases were heard within the 45-day timeframe mandated by the Ordinance (See Appendix C: Average Number of Days Between Petitions and Hearings). The mean average time between a complaint being filed and heard was 407 days. The median average was 449 days. In addition, the request for reconsideration of a previous ruling took place 622 days after it was filed.”

## Exhibit B page 1

File No. N/A

**Item No. 9**

# SUNSHINE ORDINANCE TASK FORCE AGENDA PACKET CONTENTS LIST

## Complaint Committee

**Date:** February 15, 2022

- |                          |   |             |
|--------------------------|---|-------------|
| <input type="checkbox"/> | Petition/Complaint                          | Page: _____ |
| <input type="checkbox"/> | Memorandum - Deputy City Attorney           | Page: _____ |
| <input type="checkbox"/> | Petitioner/Complainant Supporting Documents | Page: _____ |
| <input type="checkbox"/> | Respondent's Response                       | Page: _____ |
| <input type="checkbox"/> | Public Correspondence                       | Page: _____ |
| <input type="checkbox"/> | Order of Determination                      | Page: _____ |
| <input type="checkbox"/> | Minutes                                     | Page: _____ |
| <input type="checkbox"/> | Administrator's Report                      | Page: _____ |
| <input type="checkbox"/> | No Attachments                              |             |

## OTHER

- ☐ Packet Adjustments 192

Completed by: C. Leger Date 2/10/22

\* An asterisked item represents the cover sheet to a document that exceeds 25 pages.  
The complete document is in the file on a disk

## Exhibit B page 2

Leger, Cheryl (BOS)

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**From:** dschmi4@aol.com  
**Sent:** Thursday, February 10, 2022 10:15 PM  
**To:** SOTF, (BOS)  
**Subject:** Re: sotf complaints  
**Attachments:** Final20220210\_22133423.pdf

Hello Cheryl, I am submitting a 4-page document to be up front on the matter involving procedure changes. The packet should also include the same 14 pages that were in for the January packet. So it will be 18 pages total.

-----Original Message-----

From: SOTF, (BOS) <sotf@sfgov.org>  
To: DSchmi4@aol.com <DSchmi4@aol.com>  
Sent: Mon, Jan 10, 2022 9:35 am  
Subject: FW: sotf complaints

Dean: Can you please send me another copy of your 7page memo to be included in the January Complaint Committee Agenda? I already have Sullivan's. Thank you.

Cheryl Leger  
Assistant Clerk, Board of Supervisors  
[Cheryl.Leger@sfgov.org](mailto:Cheryl.Leger@sfgov.org)  
Tel: 415-554-7724  
Fax: 415-554-5163

[https://url.avanan.click/v2/\\_www.sfbos.org\\_\\_YXAzOnNmZHQyOmE6bzo3MTBjYTA4N2UyNjBhZDVmNzVkYzdIMDkzY2Y1MDRjZT01OjFjNTg6MGZmZjE2ZGI5MTg3NDhINjU1NTAyY2YzNjZIMDU1OTY1ZWZmM4Njc0MDk0YTp0Ok4](https://url.avanan.click/v2/_www.sfbos.org__YXAzOnNmZHQyOmE6bzo3MTBjYTA4N2UyNjBhZDVmNzVkYzdIMDkzY2Y1MDRjZT01OjFjNTg6MGZmZjE2ZGI5MTg3NDhINjU1NTAyY2YzNjZIMDU1OTY1ZWZmM4Njc0MDk0YTp0Ok4)



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The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

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included in the Complaint Committee Agenda? I already have Sullivan's materials. Thank you.

**From:** dschmi4@aol.com <dschmi4@aol.com>  
**Sent:** Monday, December 27, 2021 8:35 PM  
**To:** Leger, Cheryl (BOS) <cheryl.leger@sfgov.org>  
**Subject:** sotf complaints

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hi Cheryl, per that last complaints meeting: I think we should get a copy of my seven-page memo and the other seven Anonymoose/Sullivan pages over to Anonymoose, Sullivan, and of course, Warfield. Do you have a suggestion how those could be sent out? Thx, Dean

## Exhibit B page 3

February 10, 2022

### SUPPLEMENT – PROPOSAL TO ENACT CHANGES TO COMPLAINT PROCESS – by Complaint Committee Chair Schmidt

The Complaint Committee has taken consideration of recommendations of members of public **SULLIVAN AND ANONYMOOSE** to streamline the SOTF complaint resolution process, which in its current iteration has produced an enormous backlog of unresolved cases, and other impermissible delays. Reference is also made to the written Response by Chair Schmidt dated December 16, 2021 and discussed at the 1-2022 Complaint Committee hearing.

The present processes do not accurately reflect the structure of Section 67.21(e) of the Sunshine Ordinance. That law prescribes the filing of a Petition (**STEP ONE**) claiming failure to satisfy a records request within ten (10) days. The next step does not specify a hearing – the SOTF must deliver a “determination” (**STEP TWO**) within 45 days to the Petitioner. The SOTF must issue an “order” (**STEP THREE**) that the records custodian comply. If there is not compliance within 5 days, the SOTF must “notify” (**STEP FOUR**) the D.A. or A.G. There is no provision that interjects the word “hearing” amid the above four required steps.

Further on in Section 67.21(e) is the first mention of the idea of a hearing. The Petition described above at **STEP ONE** may request a hearing – whereupon, the SOTF has discretion – it “may” – conduct a public hearing. It is evident that Task Force members ultimately have full discretion to decide (by appropriate vote regarding process) how to limit the number of matters that merit conducting a public hearing. Has this “may” decision been offloaded to the Chair, or has the SOTF implicitly simply forgotten or removed the statutory discretion to decide which cases actually merit a hearing?

The hearings procedures as written now were created not by law but by past SOTF votes. There are several optional extra layers – add-ons – that,



## Exhibit B page 4

while likely well-intentioned, substantially consume precious time. The current rendition of SOTF processes seem to have resulted from some kind of belief that there is supposed to be a quasi-courtroom, with “opening statements”, “witnesses”, “rebuttals” etc. – which the Ordinance never envisioned. Sullivan proposes we rethink why we are doing it this way. He can see that the current process has through accretion become disconnected from the actual Ordinance language. He also notes rampant SOTF disregard for 5-day and 45-day requirements – contained, ironically, in the same law the SOTF is tasked to enforce vis-a-vis others.

### PROPOSAL

In light of the huge and expanding backlog and the inflated, duplicative process that is currently being used, these proposals should be taken seriously. Petitioners are being delayed for several months; it is unclear if this has been the case so long that it has become acceptable. Further, the time requirements of the Ordinance itself are not even close to being addressed – specifically, the 5-day and 45- day requirements. There is no conceivable reading of the Sunshine Ordinance that would countenance the amounts of delay Petitioners currently encounter before they see an actual Order.

The following is a 6-part proposal that could greatly enhance efficiency, without sacrificing those valuable aspects of the SOTF's role that seek maximum transparency and fundamental fairness.

I. Sullivan proposes matters be reviewed by members in an effort to formulate a “determination” before scheduling any Petition for a hearing of any kind. Members would decide which cases do, or do not, merit any hearing, whether it be at the SOTF or possibly be sent for specific work in a Committee. Member Schmidt suggests each case when deemed ready be assigned randomly to three (3) members to read. Member Stein makes a wise suggestion that they read sequentially to build up to a decision on what action should occur.

## Exhibit B page 5

Here, Sullivan adds that these three (3) members could then impose the order to the custodian of section 67.21(e). Another option implicit in Sullivan's analysis would be to stop after the hearing/no hearing decision and take a different next step. That could be where Sullivan's and Anonymoose's proposal (II. below) might complement each other and merge.

A significant number of cases could be deemed not worth a full-blown SOTF hearing (or, for that matter, a second, non-decisive Committee hearing precedent thereto).

The Complaint Procedure would be amended at Section C as follows: C.1 rewritten as follows: "When each Petitioner's file is deemed ready for a decision, it shall be reviewed by three (3) Task Force members, chosen randomly and in rotation. Members take turns reading each such file and then pass on their recommendations. If they can agree to a determination it is then provided to the Petitioner and an Order follows, per Admin. Code section 67.21(e). Alternatively, a matter can be sent on for a hearing, before the Task Force; to a consent calendar; or, in some cases needing further work, to a Committee"; C.2 replace "the" with "a", C.4 and C.5 replace "shall" with "may", and alter the addendum accordingly,

Committees should not continue to have hearings that result in no decisions. If committees are to be scheduled to hear complaint Petitions in the future, those should be limited to (1) specifically referred matters per Anonymoose/Sullivan above, or (2) reviews to determine whether to send to Consent per the Anonymoose proposal.

II. The Anonymoose proposal is a sound one, establishing a Committee-originated consent calendar process that would further eliminate waste of valuable hearing time on unnecessary matters. Or, the Anonymoose proposal could be built upon Sullivan's (2a) use of groups of individual members. Sullivan's ideas to have either individual Members review first (2a) or to have Committees decide whether to send a matter to

## Exhibit B page 6

hearing (2b) are both sound. They may also dovetail well with the Anonymoose proposal.

The Anonymoose proposal should be adopted in full, as written.

III. Sullivan points out that the hearing mechanism laid out in 67.21(e) does not extend to complaints regarding meeting access. Public meeting violation cases could often be decided with a more limited process – why should each of these petitions automatically be guaranteed not just one, but two (almost always lengthy) public hearings. These should never be sent for a Committee hearing and should be handled more efficiently.

IV. Sullivan proposes removing the Complainant 5-minute “opening statement” at any hearing. This would also presumably apply to the Respondent’s 5-minutes. They would still be allowed 3 minutes of time each after questioning. The Bylaws should be amended to delete lines 1 and 2 of Article IV, Section 10.

Further, there should be no confusion that Article IV, Section 10 is inapplicable to Committee hearings.

V. Sullivan also recommends allowing (and not discouraging) petitioners to waive hearings or to have matters heard in their absence. The Complaint Procedure should be amended at C.1 and C.7 (a), (b) and (c) to eliminate the Complainant attendance requirements.

VI. This Member proposes the SOTF should hold an extra meeting per month that would be devoted to case hearings only. That could occur in lieu of one of the Committee slots, at least until the case backlog is substantially reduced. This would be coordinated with the Clerk’s office.

Dean Schmidt, SOTF Seat 1



## Exhibit B page 7

Leger, Cheryl (BOS)

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From: Anonymoose (@journos\_anon) [F Q <arecordsrequestor@protonmail.com>](mailto:arecordsrequestor@protonmail.com)  
Sent: Thursday, November 18, 2021 2:38 PM  
To: SOTF, (BOS)  
Subject: A proposed fast-track procedure for simple complaints - public correspondence  
Attachments: signature.asc

Dear SOTF,  
(bcc custodians)

Thank you for your recent full SOTF-wide pilot approval of the streamlining of complaint responses requiring detailed written responses including allowing SOTF to rule without a hearing if no response is provided, and the separate improvement proposed on Tuesday by the complaint committee for both reconsiderations and complainant-side instructions.

I recommend another pilot procedural change (concrete proposal at bottom):

Amend the Complaint Procedure to allow: Any committee initially hearing a complaint can direct that a complaint be placed on the next full Task Force's consent agenda with a proposed specific set of violations, proposed reasons that each section was violated, and (if applicable, in a public records case) proposed order to respondents to lawfully disclose the records in compliance with all Sunshine requirements. As with any other consent agenda, any member of SOTF could still pull items from the consent agenda and have them follow the full-fledged hearing process if there was a lack of consensus. The agendas and notices for the initial committee hearing should conspicuously include a new subitem "(c) Decide whether to place complaint on the next Task Force consent agenda". This process would also better comply with the words of SFAC 67.21(e). - If the records are determined public, the order to disclose should be issued as soon as possible after that determination.

Combined with the written response requirements created a few weeks ago, this should solve what is a large percent of SOTF cases which almost always end up with unanimous rulings: the City simply ignoring a records request or being very late. A far smaller number of cases are about the intricacies of exemption laws, detailed redactions, meeting quorum, etc.

In this fashion, simple complaints take less of everyone's time and get completely resolved faster for the public (the whole purpose of SOTF), while only more complex issues require the full brainpower, time, and other features of full-fledged SOTF hearings. Simple cases also don't have to wait in line behind much more complex cases. If someone files a simple "it's been more than 10 days with no response" complaint right now, at the moment *even ignoring all of my own complaints* - it would take ~5-6 months for that complaint to get to a decision from the full Task Force under the current procedure.

In yesterday's complaint committee, all 3 of 3 complaints were apparently timeliness issues. It is unclear what purpose is served by having not only hours of meetings on these timeliness issues, but also forcing both the City and complainant to attend meetings where a large portion of the time is just waiting for other people's cases to be heard (in some cases, I expect more staff time is spent defending an SOTF timeliness complaint than the original request took to fulfill).

I urge one of the members to consider such a proposal, and suggest agendizing a pilot approval of such a change to Chair Wolfe for the next meeting.

Here's a concrete proposal to consider:

## Exhibit B page 8

"To amend the Complaint Procedures, on a pilot basis until April 30, 2022, by adding the following as Rule C12: 'Consent Agenda: Any Committee hearing a complaint may direct that it be placed on the next full Task Force meeting's consent agenda with a proposed set of violations, proposed reasons for each violation, and (if applicable, in a public records case) proposed order to respondents to lawfully disclose the records in compliance with all Sunshine requirements. In addition, the Chair or their delegate may add to the next full Task Force meeting's consent agenda any complaint which Respondents either accept or declare no contest or fail to timely respond to. The attendance of parties at a consent agenda meeting is optional. Upon request during the consent agenda of any member of the Task Force, any complaint may be removed from the consent agenda and regular hearings scheduled instead.'; and to have the Task Force consider whether to permanently amend the procedure during its April 2022 meeting."

Regards,

Anonymous

Twitter [@fourno anon](#)

### IMPORTANT:

1. If you are a public official: I intend that these communications all be disclosable public records, and I will not hold in confidence any of your messages, notwithstanding any notices to the contrary.
2. If you are NOT a public official: This communication is confidential and may contain unpublished information or confidential source information, protected by the California Shield Law, Evidence Code sec. 1070. I am a member of the electronic media and regularly publish information about the conduct of public officials.
3. I am not a lawyer. Nothing herein is legal, IT, or professional advice of any kind. The author disclaims all warranties, express or implied, including but not limited to all warranties of merchantability or fitness. In no event shall the author be liable for any special, direct, indirect, consequential, or any other damages whatsoever.
4. The digital signature (signature.asc attachment), if any, in this email is not an indication of a binding agreement or offer; it merely authenticates the sender.

Sent with [ProtonMail](#) Secure Email.

## Exhibit B page 9

Leger, Cheryl (BOS)

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**From:** sfneighborhoods.net <info@sfneighborhoods.net>  
**Sent:** Monday, November 22, 2021 9:29 AM  
**To:** SOTF, (BOS)  
**Subject:** Ideas for speeding up the Sunshine Ordinance Task Force

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Chair Wolfe and SOTF members,

*As a Public Communication*

Index

1. Rewrite SOTF procedures and by-laws to use fully the Sunshine Ordinance and The Brown Act for greater expedited public access.
2. Procedure Rewrite Suggestions.
  - a) Determination by not holding a hearing
  - b) Determination by committee less than the Full SOTF
3. Rewrite SOTF By- Laws
4. Violations by SOTF of Sunshine Ordinance "shall"s
5. Burden of Proof on the Respondent.
6. SOTF "passive meeting" advisory committees for talking about changes in procedures and by-laws.
7. Changing the order of a hearing
8. Changing the order of hearings on the agenda.

SOTF regularly violates and does not fully use the Sunshine Ordinance and The Brown Act. The disposition and enforcements of complaints can be speedup by the full use of the Sunshine Ordinance and The Brown Act. The current self-imposed restrictions (and at least one city imposed requirement) in the SOTF by-laws and Public Compliant Procedures (procedures) unnecessarily impede SOTF from the requirements of the public access laws.

1. Rewrite SOTF procedures and by-laws to use fully the Sunshine Ordinance and The Brown Act for "the requirement which would result in greater or more expedited public access shall apply." Sec 67.5 with similar words in The Brown Act 54953.7 and the CPRA 6253 (e). SOTF procedures and by-laws are currently violating these provisions. 170 plus complaints (as 11-16-2021), months before being heard by SOTF, means people not getting public records or public access until months later. This violates the previously cited provisions and many others in public access laws.

## Exhibit B page 10

2. Procedure rewrite suggestions. (Sec 67.30 (c) *The task force shall develop appropriate goals to ensure practical and timely implementation of this chapter.*)

a) Write procedures that allow for "may conduct public hearing concerning a record request denial." Sec. 67.21 (e).

1) SOTF Member(s) determine that a complaint is straightforward. There was a denial of public records, and cite the violations or no denial of public records.

2) Reviewed by (number ?) of SOTF members that concur. This can be called a committee though they wouldn't actually meet. The concurring would be by individual review with each individual citing violation or none.

3) These SOTF members make a determination that the record is public and "immediately order the custodian of the public record to comply with the person's request." Sec 67.21 (e) You can call this a "Determination". The "determination" is made from a majority agreed upon violations cited.

"Order of Determination" does not exist in the Sunshine Ordinance. It is a fabrication of previous SOTF. "Order of Determination" can still be used to distinguish a full SOTF determinations from other determinations. A SOTF "determination" is used 4 times in 67.21 (d) and 4 times in 67.21 (e).

Note: The "may conduct public hearing" seems to be only on a record request denial and not to public access of a meeting, Sec 67.30 (c) and Sec 67.5 "expedited" and "timely" would support using this process for straightforward public access complaints.

b) Write procedures that allow for adjudicating a complaint within a SOTF Committee. There is nothing in public access laws that prohibit this. Sec 67.30 (c) and Sec 67.5 "expedited" and "timely" would support.

1) SOTF Committee members determine that a complaint does not go into areas of law that are not well known or that other complicated question arise (*example: jurisdiction, what a under consideration body is*)

2) If SOTF Committee members determine a complaint should be heard by full SOTF, they can at any time decide to hold a preliminary hearing to bring clarity to the issues of a complaint and forward a report and the complaint to the full SOTF.

3) The SOTF Committee members make a determination if b 1 is the decided route.

c) Other stipulation for procedures 2 a) and b):

1) If a determination is made to deny public records, public information or public access, a petitioner can ask for a full SOTF hearing. The full SOTF can review the determination and either deny a hearing and let the determination stand or have a full hearing. This process can be written similar to appeal of a lower court decision to a higher court. This is in keeping with CA Constitution, court cases and public access laws that inferences and evidence be seen in favor of furthering greater public access.

3. Rewrite SOTF By-Laws: In order for 2 a) and b) procedures to work Section 7. Action at a Meeting; Quorum and Required Vote., SOTF By-Laws must be changed to quorum to majority of members of a committee or full task force.

## Exhibit B page 11

"Action taken" requires only a majority of members of a committee or full task force voting in the affirmative or negative on all matters. The Brown Act 54952:6.

Other smaller changes to SOTF By-Laws are probably required in order for 2 a) and b) procedures to work. I do not intend this document to be all-encompassing. Further changes to SOTF by-laws would have to happen with other suggestions below.

4. SOTF currently violates and does not use fully these sections of the Sunshine Ordinance. The regular use of the enforcement clauses in Sunshine Ordinance may lower the rate of complaints submitted because of better compliance by custodians of records. These are the shalls:

67.30 (c) "The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts." (*Thanks Anonymous*) Note: Violations do not have to be willful. It is any violation. Repeat offenders will become known to the municipal office with enforcement power. Repeat offenders may be willful. It is up to that municipal office to determine enforcement not to rehear a complaint or determine the violation(s).

67.21 (e) "If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance."

67.21(e) "The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public."

67.21(e) "Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request."

5. Sec 67.21 (g) "In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies." While this is written for "any court", SOTF can use "the burden shall be upon the custodian to prove with specificity the exemption which applies". Burden of proof is implied in SOTF procedures "all inferences and evidence shall be viewed in the light most favorable to the petitioner." Burden of proof is implied in CA Constitution, The Brown Act, and CPRA.

The "specificity the exemption which applies" should happen in writing before any hearing. In fact, custodian of records should have already done this, Sec. 67.21 (b), Sec 67.27, and CPRA 6253 (c), in the original response to the public record request. If the respondent does not submitted in writing before a hearing then SOTF "pursuant to this article there shall be a presumption that the record sought is public" (Sec 67.21 (g)) and order the records to be public. No allowing for exemptions which apply before or after a hearing.

6. At the 11-16-2021 meeting of the Complaint Committee, Member Stein presented rewritten complaint and reconsideration procedures. Member Stein stated that it is hard to make these changes and collaborate within the limited time of hearings. That SOTF members could not discuss outside of hearings matters that are in the jurisdiction of SOTF. This frustration is understandable. There is a work around.

Sec 67.3 (c) "Passive meeting body" shall mean:

(1) "Advisory committees created by the initiative of a member of a policy body, the Mayor, or a department head;"



## Exhibit B page 12

These passive advisory committees do not have to include the Chair of SOTF, but do have to include at least one member of the public because 67.3 (4) "Passive meeting body" shall not include a committee that consists solely of employees....". SOTF members alone cannot talk without a hearing.

These passive advisory committees do not require SOTF administrative presence, any type of clerk, minutes, recording, or agenda, though if "any agenda actually prepared for the gathering shall be accessible to such inquirers as a public record." Sec. 67.4 (a) (1).

I would formally notice such meetings with enough time to allow the public to observe. It is up to these passive meeting committees to decide to allow public comment beyond the public member(s) of the committee. The above would be in keeping with the requirements of 67.4 (1) (2). These are meetings, not hearings. Not having minutes or recordings should not be a problem, since any advisory documentation coming out of such passive advisory committees should suffice.

7. Consider changing the order of a hearing. The petitioner opening statement before the respondent has little use other than a rehash of the complaint submitted. Even for petitioners familiar with the hearing process, a first statement is like randomly providing clarification and trying to address issues that may come up after the respondent opening statement and the SOTF questions and discussion are going to happen. A petitioner really does not know where the discussion is going to go. The respondent has the advantage of hearing the petitioner and being able to counter, while the petitioner is left to try and counter all at the very end of the discussion in 3 minutes. It is very unfair to the petitioner. It is often felt that it is the petitioners "burden of proof" to prove when it is not.

Suggested: Start with questioning and then discussion from the SOTF members. They should be prepared. The more prepared SOTF members are before a hearing the faster the hearings should go. From SOTF procedures: C (2) "All members of the SOTF are responsible for being familiar with the complaint issues prior to the meeting." The SOTF questioning and discussion will bring quick focus to the issues of the complaint and whether the respondent has met the burden of proof on all alleged violations.

Next, allow a 3 or 5 minutes response from the respondent and the petitioner. The response time should be allowed to vary depending on the complication of the issues. Chair's call on time allowed.

Possible further discussion by SOTF members.

Formulation of a motion.

3-minute Public Comment.

Vote on Motion.

Other Motion(s). You do not have to cram everything in one motion, especially in complex complaints.

8. Consider moving the complaints that take more brainpower to the beginning of hearings when SOTF member's brains are fresher. This should result in quicker hearings. Petitioners with easier straightforward complaints later in the hearing can be given the chance to "authorize the SOTF to proceed with the hearing in absentia on the complaint". Many are complaints are denial of records either by improper withholding or time. It is up to SOTF to require the burden of proof of the respondent and "protect the public's interest in open government". It is not the petitioner job.

A complaint is the raising of issues for the task force to determine if the respondent has met the burden of proof in order for SOTF to protect the public's interest.

## Exhibit B page 13

Sec 67.1 (e) "Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force, can protect the public's interest in open government."

SOTF is not a neutral party. Protecting the public's interest is not neutral. It often seems that SOTF gives too much deference to the government's interest. Just look at SOTF By-Laws Section 7, Action at a Meeting; Quorum and Required Vote. Who's interest is that?

SOTF procedures 7 (d) "After an initial in-person appearance, the Complainant may authorize the SOTF to proceed with the hearing in absentia on the complaint without the Complainant's presence at the hearing. The only information that will be considered from the Complainant will be the submitted written documents or information provided at prior hearings. Complainant waives their rights to provide testimony if they authorize the SOTF to proceed without their attendance."

All the above should speed up the adjudication and hearing of complaints and keep SOTF from violating multiple provisions of the Sunshine Ordinance and The Brown Act.

Sullivan

## Exhibit B page 14

December 16, 2021

### **RESPONSE TO SULLIVAN AND ANONYMOOSE – by Complaint Committee Chair Schmidt**

The Complaint Committee and the SOTF should be considering ideas to streamline the SOTF complaint resolution process, which in its current iteration has produced an enormous backlog of unresolved cases. Several good suggestions have come from knowledgeable members of the public Sullivan and Anonymoose (a.k.a. Anonymous #3).

Also, it is important in this regard to reference the repeated mentions by member of the public Warfield of Administrative Code Section 67.30 (c), the enumeration of the seven (7) statutory “jurisdictional roles” of the SOTF. In the present situation, with the presently written configuration of bylaws/rules/procedures, most members of this SOTF spend over 90% of their time with the sixth (#6) of those seven roles – preparing for and participating in hearings of individual violation cases. There is little or no time left to work in roles 1, 2, 3, 4, 5, or 7. With the current backlog, it is nearly impossible to deal with anything else, other than deciding cases (#6).

### **CURRENT STATUS**

The most available measure to assess the extreme nature of the backlog is to compare the Pending Case numbers according to the administrator reports with a pertinent past date. The most current Administrator report was reviewed December 1, 2021. The SOTF October 7, 2020 was the point in time when the SOTF resumed hearing of cases, though remotely, after the COVID shutdown. That was also when two SOTF members, Jen Wong and Dean Schmidt, began. In 14 months, the numbers increased:

	10-20	12-21
Cases pending SOTF hearing	12	61
Cases pending Committee hearing	88	113

## Exhibit B page 15

Cases pending

100

179\*

\*Notably, 105 from the same complainant, Anonymoose.

Under current protocol, all 179 of the current "cases" are being channeled through at least two hearings each – a committee, and the full SOTF. That is a structure that may or not have worked in the past, but these numbers show it may not be workable any more.

The present public hearing schedule includes three committee hearings per month in addition to the full SOTF meeting. Each of those meetings is administered and staffed by the Clerk of the Board office. Needless to say, there is a finite amount of time available each month to have hearings on case complaint petitions.

Compared to the above-listed 61 backlogged cases ready to be heard by the SOTF, only 4 to 6 are calendared to be heard each month. Perhaps most notably, those monthly meetings have recently been extending to 7 or even over 8 hours.

### **ANONYMOOSE PROPOSAL – 11-18-2021**

Anonymoose proposes increased use of a consent agenda.

It is important to look at the extent to which use of a Consent Agenda can be appropriate. Consent calendars are for routine, non-controversial items. One common use is described in Robert's Rules: when a matter is heard in a Committee and the sponsor, or an administrator, then places it on the consent calendar. Robert's Rules at 361. Typically, any member of the body may have an item removed and heard by regular order.

This new proposal by Anonymous seems to follow the RONR concept. Significantly, this use of a Consent Calendar only applies to complaints heard in a Committee, and the Committee directs placing onto the Consent

## Exhibit B page 16

Calendar. The power to designate an item as a Consent matter would not be reserved only to a single member.

Anonymoose references the recent Pilot project use of a Consent Agenda. That is a different kind of use of a consent calendar in at least two regards. First, it does not provide that a Committee place a matter on the Consent Agenda, instead, that is decided by a single member, the SOTF Chair. Second, though some of those matters involve an explicit agreement by each party to a dispute to a finding of a violation, there are others where a Respondent has not indicated consent (unless silence is somehow deemed to be consent).

### SULLIVAN MEMORANDUM 11-22-2021

Sullivan enumerates eight (8) ideas. Using that numbering, here are some observations.

1. General recommendation to rewrite bylaws/rules, eliminate "self-imposed restrictions."
2. There is good material in Sullivan 2. Sullivan essentially focuses on finding better, more workable approaches to implementing 67.21(e).
  - A. Fundamentally, the fact that SOTF "**may** conduct [a] public hearing" concerning a record request denial strongly suggests that Task Force members have full capability to decide (by appropriate vote regarding process) how to limit the number of matters that merit full SOTF attention.

The hearings procedures as written now were created not by law but by past SOTF votes. There are several optional extra layers – add-ons – that, while likely well-intentioned, substantially consume precious time. Sullivan proposes we rethink why we are doing it this way. He can see that the

## Exhibit B page 17

current process has through accretion become disconnected from the actual Ordinance language.

Essentially, the Sullivan proposal is a much simpler method instead of the present double committee/task force hearing regimen. Per Sullivan, before scheduling any hearing, a records denial complaint/petition file could be simply read over by a decided number of members (possibly 3, could be chosen randomly, distributed fairly). They would decide whether a "hearing" is needed; and they could devise a "determination" Here, Sullivan adds that these members could then impose the order to the custodian of section 67.21(e). Another option implicit in Sullivan's analysis would be to stop after the hearing/no hearing decision and take a different next step. That could be where Sullivan's and Anonymoose's proposals might complement each other and merge.

Sullivan then questions why/when there is a need for an Order Of Determination per se, and proposes that term only be used in full SOTF cases. Importantly, he anticipates that a significant number of cases could be deemed not worth a full-blown SOTF hearing (or, for that matter, a second, non-decisive Committee hearing precedent thereto).

Lastly, Sullivan points out that the whole hearing mechanism laid out in 67.21(e) does not extend to complaints regarding meeting access. He hints that public meeting violation cases could often be decided with a more limited process – certainly not requiring two (almost always lengthy) public hearings.

- B. Then, as an alternative new procedure, Sullivan proposes permitting Committees to distinguish between straightforward cases that can be decided in Committee, versus the cases worthy of a full hearing. This too could be merged with the ideas in the Anonymoose proposal.

## Exhibit B page 18

C. There is a further step proposed, a denied Petitioner requesting a full SOTF hearing. Sullivan would require the full SOTF decide when to grant a hearing. It is not completely clear but Sullivan here seems to be suggesting that his A and B might not be the final say.

3. Propose reducing level of necessary quorums.
4. Here, Sullivan simply cites the Ordinance.
5. Nothing here.
6. The suggestion here is to create advisory bodies, each of which would need to include a member of the public, in order to have a different kind of opportunity for meeting less formally.
7. Notable here is the time-saving proposal of removing the Complainant 5-minute "opening statement." This would also presumably apply to the Respondent's 5-minutes.
8. Notable here is the ability of a complaining party to waive "rights" to testify, and have a Complaint hearing without their presence.

### BRIEF RESPONSE

In light of the serious backlog and the inflated, duplicative process that is currently being used, these proposals should be taken seriously. Some bylaw and/or rule changes could be done permanently; for others, it might be necessary to implement a Temporary Urgent Streamlining Process to be in effect until the Backlog is sufficiently erased, to reach a level at least as low as 11 waiting for SOTF/ 50 to 75 others.

There is a compelling case for better assisting the public to get their rightful access to records/meetings without unnecessary delay. Some will want

## Exhibit B page 19

their cases heard to obtain a timely Order [of Determination]. Delays in the final Orders, to them, can be harmful, as several petitioners have recently noted. There are other petitioners for whom the Order is less important than pushing to get as many records as possible, or to have their access violations noted.

The following are proposals that could greatly enhance efficiency, without losing those valuable aspects of the SOTF's role that seek maximum transparency and fundamental fairness. This Member approves five items from Sullivan and Anonymoose:

(From Sullivan 2a) Have matters reviewed by members before scheduling any Petition for a hearing of any kind.

(From Sullivan 2a) Take due recognition that 67.21 procedures need not dictate the process for meeting access violation complaints.

(From Anonymoose (per Sullivan 2b)) Sullivan's ideas to have either individual Members review first (2a) or to have Committees decide whether to send a matter to hearing (2b) are both sound. They may also dovetail well with the Anonymoose proposal. The Anonymoose proposal is a sound one, establishing a Committee-originated consent calendar process that would further eliminate waste of valuable hearing time on unnecessary matters. Or, the Anonymoose proposal could be built upon Sullivan's (2a) use of groups of individual members.

(From Sullivan 7) Eliminate 2x5 minute opening statements, yet still allowing 3 minutes of time each after questioning.

(From Sullivan 8) Permit (and do not discourage) complaining petitioners to waive hearings or to have matters heard in their absence.

In addition, this Member proposes two more revisions. First, the SOTF should hold an extra meeting per month that would be devoted to case hearings only. That could occur in lieu of one of the Committee slots.



## Exhibit B page 20

Second, Committees should not continue to have hearings that result in no decisions. If committees are to be scheduled to hear complaint Petitions in the future, those should be limited to (1) specifically referred matters per Anonymoose/Sullivan above, or (2) reviews to determine whether to send to Consent per the Anonymoose proposal.

Dean Schmidt, SOTF Seat 1

## Exhibit C page 1

**Subject:** RE: Supervisor of Records has stopped their process of complying with the ordinance under 67.21 D? Public Record Request  
**From:** "Supervisor Records (CAT)" <supervisor.records@SFCITYATTY.ORG>  
**Date:** 7/19/2024, 2:58 PM  
**To:** 'sfneighborhoods.net' <info@sfneighborhoods.net>  
**CC:** "Supervisor Records (CAT)" <supervisor.records@SFCITYATTY.ORG>

Dear Sullivan:

We do not believe that Member Wolfe's statements are based on any documents or communications from our Office. Our Office is still carrying out the duties of the Supervisor of Records in the same manner we always have.

Member Wolfe may be referring to issues that arose several years ago during Task Force hearings on a few complaints. In those complaints, petitioners incorrectly alleged that the Supervisor of Records had violated Section 67.21(d) because the Supervisor of Records declined to find the City departments at issue in violation of the Sunshine Ordinance or otherwise issue an "order" to the department custodians to comply with the Sunshine Ordinance.

Although Section 67.21(d) states that the Supervisor of Records shall "order" custodians of records to comply with the Sunshine Ordinance, the City Attorney must apply that requirement consistent with the City Attorney's role and duties under the Charter. As the Court of Appeal held in 2014, the Sunshine Ordinance cannot abrogate the attorney-client relationship that the Charter establishes between the City Attorney - as attorney - and the City, including its various officers and agencies - as clients. *St. Croix v. Superior Court* (2014) 228 Cal.App.4th 434. The City Attorney carries out the role of Supervisor of Records in a manner that maintains the Office's Charter-mandated obligation to serve as the attorney for City agencies to which petitions pertain.

Consistent with the Sunshine Ordinance's call to protect and secure the rights of the people of San Francisco to access public information, the City Attorney's Office will, upon receipt of a Supervisor of Records petition, contact the client department to determine whether a record that is the subject of the petition must be disclosed. But the Charter states that the role of the City Attorney is to "provide advice" to its clients. Charter, § 6.102(4). This is inherent to any attorney-client relationship. Consistent with the mandates of the Charter, the City Attorney acting as Supervisor of Records advises the client department about the client's legal obligations with respect to the records request. The City Attorney must perform its duty as Supervisor of Records in a manner that is consistent with its role relative to its clients as governed by the Charter and state law. *St. Croix*, 228 Cal.App.4th at 464.

We disagree with Member Wolfe's contention that this approach to the Supervisor of Records function somehow makes it "defunct." By working with client departments on Supervisor of Records petitions, we are often able to ensure the release of public records to requestors in an efficient manner.

Very truly,

Kate G. Kimberlin (she/her)  
Deputy City Attorney  
Office of City Attorney David Chiu  
[www.sfcityattorney.org](http://www.sfcityattorney.org)

-----Original Message-----

From: sfneighborhoods.net <[info@sfneighborhoods.net](mailto:info@sfneighborhoods.net)>  
Sent: Monday, July 8, 2024 9:02 AM

## Exhibit C page 2

To: Supervisor Records (CAT) [<supervisor.records@SFCITYATTY.ORG>](mailto:supervisor.records@SFCITYATTY.ORG)

Subject: Supervisor of Records has stopped their process of complying with the ordinance under 67.21 D? Public Record Request

### Public Record Request

At the March 6, 2024 meeting of the SF Sunshine Ordinance Task Force, Member Wolfe said this at the 1:41:11 mark:

"this we also must take note that recently um supervisor records has stopped their process of uh complying with the ordinance um under 67.21 d rendering it somewhat defunct"

1. Is this true?

2. If true, please provide the documentation given to SF Sunshine Ordinance Task Force and/or Member Wolfe that informed them that the Supervisor of Records has stopped their process of complying with the ordinance under 67.21 D.

Thank You

Sullivan

# Exhibit D page 1

File No. N/A

SOTF Item No. 3  
CAC Item No. \_\_\_\_\_

## SUNSHINE ORDINANCE TASK FORCE AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force

Date: July 11, 2012

Compliance and Amendments Committee

Date: \_\_\_\_\_

### CAC/SOTF

<input type="checkbox"/>	<input type="checkbox"/>	Memorandum
<input type="checkbox"/>	<input type="checkbox"/>	Order of Determination
<input type="checkbox"/>	<input type="checkbox"/>	Complaint and Supporting documents
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
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### OTHER

<input type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Jerry Threet, DCA, Majority Voting Requirement Advice</u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Jan. 25, 2011 - Task Force Packet (Tom Owen, DCA, letter)</u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Apr. 26, 2011 - Task Force Packet</u>
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____

Completed by: Andrea Ausberry Date July 3, 2012

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

\*An asterisked item represents the cover sheet to a document that exceeds 25 pages.  
The complete document is in the file.

## Exhibit D page 2



Additional Advice re Majority Voting Requirement  
Jerry Threet to: SOTF

06/28/2012 03:51 PM

Ms. Ausberry -

Please include this email in the packet for the agenda item regarding a change in the majority voting requirement for substantive issues.

Members -

Included in your agenda packet is a memoranda from Tom Owen of our office to the Sunshine Task Force from 2007, addressing the issue of whether the Task Force was subject to the requirements of Charter Section 4.104(b) regarding the majority voting requirement for taking substantive action. DCA Owens concluded, after thorough analysis, that the Task Force was subject to the requirements of that charter section. That section states that "the affirmative vote of a *majority of the members shall be required* for approval of any matter, and the body shall act by a majority . . . of all its *authorized members*." This has been the consistent advice of our office to the Task Force, including the advice I provided when the Task Force amended its bylaws last April, 2011 to allow it to take substantive action on a vote of the majority of members present.

During debate over this issue, some members of the Task Force and members of the public have suggested that, even if the Task Force is subject to the requirements of Section 4.104(b), those requirements may be met by a vote of a majority of the members present at a meeting, rather than a majority of the members authorized. This is inconsistent with the plain language of the charter section in question, as well as court precedent interpreting similar provisions. Therefore, Section 4.104(b) requires that any substantive action be approved by the vote of at least 6 members of the Task Force, a majority of the eleven voting seats authorized.

Charter Section 4.104(b) states, in relevant portion:

The presence of a majority of the members of an appointive board, commission or other unit of government shall constitute a quorum for the transaction of business by such body. [ . . . ] Unless otherwise required by this Charter, the affirmative vote of a majority of the members shall be required for the approval of any matter, except that the rules and regulations of the body may provide that, with respect to matters of procedure the body may act by the affirmative vote of a majority of the members present, so long as the members present constitute a quorum. All appointive boards, commissions or other units of government shall act by a majority, two-thirds, three-fourths or other vote of all members. Each member present at a regular or special meeting shall vote "yes" or "no" when a question is put, unless excused from voting by a motion adopted by a majority of the members present.

Section 4.104(b) requires that any substantive action be taken by "the affirmative vote of a *majority of the members shall be required* for approval of any matter, and the body shall act by a majority . . . of all its *authorized members*." Where this section intends that a majority of members *present* is sufficient, as with the number of members required to constitute a quorum or to take action on procedural matters, it clearly states this. This stands in contrast to the requirement that the affirmative vote of a majority of authorized members is required to take substantive action. Thus, the language of this section clearly requires an affirmative vote of 6 members of the Task Force to take substantive action.

The City Attorney's Office provided similar advice in Opinion 78-91, where it advised that a majority vote of 6 of the 11 members of the Board of Supervisors was necessary to fill a vacancy in the office of mayor caused by the assassination of Mayor Moscone, even though the number of Supervisors had been reduced by two, due to the assassination of Supervisor Milk and the resignation of Supervisor White. That opinion quoted 43 American Law Reports 2d 703 for the legal proposition that "the total original membership of the council has been held in numerous cases to be the base on which a determination

## Exhibit D page 3

must be made as to whether a vote constitutes a majority. [ . . . ] The fact that some members [ . . . ] are absent at the time of the vote has been held not enough to vary the requirement that the necessary majority is that the full membership of the body."

Likewise, Opinion 78-91 cites *City of San Francisco v. Hazen* (1855) 5 Cal. 169, where the Court struck down ordinances passed by the Board of Supervisors that authorized the sale of certain real property owned by the City. The Court in that case stated that "[i]n construing statutes, force and effect should be given to every part of them. Thus, where a law is capable of two constructions, that one must be adopted which will preserve the sense, as well as the several parts, as of the whole Act." Employing this rule, the Court interpreted the charter in place at that time, which required that "no ordinance . . . shall be passed except by a majority of all the members elected." The Court decided that the word "elected" in that charter section must be given meaning to require a majority of all members, otherwise "the Board may be reduced to one member and he would be as competent to act as a full Board. Similarly, the term "authorized" in current charter Section 4.104(b) must be given meaning, lest it be considered redundant.

Thus, it is clear that, under section 4.104(b), any substantive action by the Task Force must be taken by the affirmative vote of 6 members.

---

Jerry Threet, Deputy City Attorney  
Neighborhood and Resident Safety Division  
Counsel to Sunshine Task Force  
Office of City Attorney Dennis J. Herrera  
1390 Market Street, 6th Floor  
San Francisco, CA 94102  
Direct: (415) 554-3914  
Fax: (415) 437-4644  
[jerry.threet@sfgov.org](mailto:jerry.threet@sfgov.org)

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# Exhibit D page 4

Date: Jan. 25, 2011

Item No. 1  
File No. \_\_\_\_\_

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

<input checked="" type="checkbox"/>	Presentation by Allen Grossman
<input type="checkbox"/>	_____
<input type="checkbox"/>	_____
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<input type="checkbox"/>	_____
<input type="checkbox"/>	_____

Completed by: Chris Rustom

Date: Jan. 21, 2011

**\*This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

\*\* The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

## Exhibit D page 5

### INTRODUCTION: SOTF MEETING QUORUM AND VOTING RULES

The public's rights of access to this City's public records and meetings were enhanced significantly with the its voters' adoption of the its Sunshine Ordinance over 10 years ago.

The single most important part of that law was the establishment of a unique body, the SOTF, as the quasi-judicial forum to resolve disputes between the public and the City officials, departments and agencies regarding open government matters, particularly access to public records. The SOTF affords the public a level playing field with expedited relief when these disputes arise; no need to file and pursue a lawsuit, necessary under state law without the SOTF.

Over the past few years the SOTF's ability to remedy violations and maintain that "level playing field" has been seriously compromised as a result of the City Attorney's advice regarding both minimum quorum and voting requirements.

When only six SOTF members attend a meeting - which has happened recently - the complainant will be denied access to records or the proper conduct of a meeting even if a five-member majority - 83% - vote "yes"; whereas, the respondent City department, official or agency will absolved by a single "yes" vote - 16.67%. Now, with only nine seats filled, the complainant will need no less a two-thirds majority.

Such a voting "rule" is manifestly unfair, untenable and cannot be justified under any appropriate standard. It is certainly contrary to the purposes of the constitutional and state law protections afforded the public for gaining access to public meetings and records.

The following Memorandum addresses in detail the three legal issues on which the City Attorney's advice was given and why, in my opinion, that advice, in each instance, was improper. In addition, it will show that, if the SOTF chooses to reject that advice on any of the three issues, the SOTF can adopt its own quorum and voting rules. This would put the complainant and the respondent on an equal footing on all disputes heard by the SOTF.

However, even if the City Attorney's advice on all three is correct, there is a partial but important solution involving disputes over disclosure of public records, which constitute most of the disputes heard by the SOTF. The proposal I made last month and repeat here effectively eliminates the egregious consequences of the existing voting procedure with respect to public records requests.

In short, the current SOTF voting procedure whether a requested record is disclosable should be reversed because under California law all public records are *presumptively* disclosable and the City's departments, officials and policy bodies have *the burden of establishing that a specific exemption from disclosure applies*. For that reason, a motion should not be for a determination of a "violation." Rather, the motion put to the vote should be for a determination that the specific exemption relied on by the respondent applies; and the burden of proving that exemption should rest on the respondent, not on the complainant to establish that it does not apply. Thus, in the case of the five to one vote that the complainant would now lose, the respondent would lose and be required to disclose the requested record, which is as it should be.

Respectfully Submitted,

Allen Grossman



## Exhibit D page 6

### MEMORANDUM

TO: SOTF MEMBERS

RE: SOTF MEETING QUORUM AND VOTING RULES

DATE: JANUARY 25, 2011

---

While the public statewide has constitutionally protected and state law rights to open government -- access to public records and open meetings of state and local bodies - San Franciscans have expanded rights and protections from the San Francisco Sunshine Ordinance, a voter initiated and voted adopted law.

Probably the single most important one was the establishment of a unique body, the SOTF, as the quasi-judicial forum to resolve disputes between the public and the City officials, departments and agencies regarding open government matters.

The SOTF is designed to afford members of the public a level playing field with expedited relief when these disputes arise; no need to hire an attorney, file a lawsuit, take on the full might of the 200 lawyer city attorney's office or wait for the case to progress to a decision, all of which would be needed under the state laws without the SOTF.

That design is implemented in a number of ways:

- First, the SOTF is required to inform the petitioner of its determination whether the requested public record, is disclosable no more than 45 days from the time the petition is filed.
- Next, if the record is found disclosable, the SOTF must immediately order compliance; if the respondent fails to comply within five days the SOTF must to notify the district attorney or the attorney general to insure compliance.
- Lastly, throughout and prior to this entire procedure, The San Francisco City Attorney's office ...[can] not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public."

Thus, it is critical that the SOTF not be hamstrung by imposed rules or procedures that prevent it from expeditiously carrying out its mandated responsibility to serve as the public's "court".

Nonetheless, that is exactly what has happened over the past few years as the SOTF's ability to remedy these violations and its ability to maintain that "level playing field" has been seriously compromised as result of the City Attorney's advice. That advice on several issues raised both the minimum quorum requirement and the voting threshold the public must reach to prevail. This advice has been given, notwithstanding the City Attorney's obligation under Sunshine Ordinance

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that the "his office" act to protect and secure the rights of the people of San Francisco to access public information and public meetings..."

When only six SOTF members attend a meeting - which has happened recently - the complainant will be denied access to records or the proper conduct of a meeting even if a five-member majority - 83% - vote "yes"; whereas, the respondent City department, official or agency will absolved by a single "yes" vote - 16.67%. Now, with only nine seats filled, the complainant will need no less a two-thirds majority.

That voting "rule" is manifestly unfair, untenable and cannot be justified under any appropriate standard. It is certainly contrary to the purposes of the constitutional and state law protections afforded the public for gaining access to public meetings and records.

What follows is my presentation of the contested legal issues and some suggested solutions. I will try to minimize the legal content of the explanations, although these issues are 100% legal in nature.

### Three Basic Questions to be Answered.

Three questions need answers before a definitive conclusion can be reached on the quorum and voting rules to which the SOTF is subject or, alternatively, which it may adopt for itself. They are:

First, is the San Francisco Sunshine Ordinance a wholly independent stand-alone law not subject to the San Francisco City Charter?

If the answer is "No", then the SOTF can adopt its own quorum and voting rules without regard any provisions in the City Charter.

Second, if the answer is "yes", are there any specific provisions in the City Charter that govern the SOTF quorum and voting procedures?

If the answer is "no", then the SOTF can adopt its own quorum and voting rules without regard any provisions in the City Charter

Third, if the answer is "yes", which ones are they and how should those rules be followed by the SOTF in its quorum and voting procedures?

The first question: Is the San Francisco Sunshine Ordinance a wholly independent stand-alone law not subject to the San Francisco City Charter?

Under the Brown Act:

A **meeting** is "... any congregation of a **majority of the members of a legislative body** at the same time and location, including teleconference location, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body. [§54952.2(a)] and

**Action taken** at a meeting is "... a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or **an actual vote by a majority**

## Exhibit D page 8

of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance. [§54952.6]

The common rule is that a majority of the members of the body physically present constitute a quorum and the decision of a majority of those present constitutes action taken. There is nothing in the Brown Act that specifically negates that this rule when determining what constitutes a meeting and what constitutes action taken.

The Oakland Ethics Commission so states that in its digest of its own Sunshine Ordinance in the following quotation from its website:

"The Brown Act and Sunshine Ordinance do not expressly state how a public meeting must be conducted. There are issues that may arise at a public meeting however, that may affect whether the meeting complies with open meeting laws after the meeting begins.

"The following is a brief summary of those issues:

"Presence of a Quorum. □ Unless otherwise provided in the city ordinance or resolution creating the local body, a majority of the members typically constitutes the quorum. A quorum is necessary before the local body can take any formal action; **a majority of a quorum is required to take action on behalf of the local body.** (Emphasis added.)

If that is the case under State law, the City Charter provision relied in by the City Attorney requiring a super majority is inapplicable under the Brown Act's quorum and voting rules when fewer than all 11 members attend a SOTF meeting or when SOTF seats are vacant; thus, the SOTF meetings can be conducted by quorum and voting rules that it adopts consistent with its purposes and by Robert's Rules of Order [SOTF By-Laws §5(a)].

However, the City Attorney is on record that the City Charter always "trumps" the San Francisco Sunshine Ordinance. For example:

- In a 2008 Memorandum, Paula Jesson, the Deputy City Attorney, acting in the capacity of the Supervisor of Records under Section 67.21(d) of the Sunshine Ordinance, wrote:

"In your email, you cite Section 67.36 of the Sunshine Ordinance, which states that the Ordinance "supersedes other local laws," and you note that the Charter is local law too. **However, an ordinance cannot trump the Charter, which is the supreme local law...**"[Citations and quotations from cited cases omitted.)

- In his January 4, 2011 Memorandum to the SOTF regarding case # 10057, DCA Threet stated:

"Put simply, ... **Where an ordinance and the Charter are in conflict, the Charter must prevail.** (citation omitted) The Controller therefore cannot be prohibited by the Sunshine Ordinance from asserting this exemption."

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The full supremacy provision is clear and to the point: "The provisions of this Sunshine Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply."

As some members know, my answer to the first question is "yes" because (1) the "supremacy" provision is effective and the Sunshine Ordinance is the operative law when there is a conflict with the City Charter and (2) in any case, the two State laws, the Brown Act and the CPRA, coupled with the authority that each law gives local agencies to expand public meeting and records access preempts those fields from any restrictive regulation by the local agency; the so-called "preemption" doctrine.

To my knowledge the City Attorney has never undertaken an honest in-depth analysis of these two issues: (a) whether the City Charter is, in fact, the "trumping" law, given that the San Francisco Sunshine Ordinance was a voter initiated and adopted law containing a supremacy provision superseding the City Charter when a conflict exists or (b) even if the SOTF is subject to the City Charter, whether the preemption doctrine prevents the Charter from imposing any restrictions on the SOTF, its expanded access to public meetings and records, its functions or its procedures.

The SOTF, as a body, can either accept the City Attorney's legal advice - by how many votes? - and not pursue the trumping issue any further; or it can reject the City Attorney's legal advice and adopt a set of rules that conform to the norm; i.e., a majority of filled seats constitute a quorum for a meeting and the vote of majority of that quorum constitutes action taken.

The second question: If the answer is "yes" - the Charter does "trump" the San Francisco Sunshine Ordinance - the only relevant section of the City Charter that could govern the SOTF quorum and voting procedures is Section 4.104(b), which provides, in part:

"The presence of a majority of the members of an appointive board, commission or other unit of government shall constitute a quorum for the transaction of business by such body. ... Unless otherwise required by this Charter, the affirmative vote of a majority of the members shall be required for the approval of any matter. All appointive boards, commissions or other units of government shall act by a majority, two-thirds, three-fourths or other vote of all members. ..."

The City Attorney's advice is found in DCA Thomas J. Owen's May 21, 2007 Memorandum:

**"Since the Sunshine Ordinance Task Force is an "appointive board, commission or other unit of government" within the meaning of Charter Section 4.104(b), it is subject to the requirements that:**

**"(1) A quorum shall consist of the presence of a majority of the members of an appointive board, commission or other unit of government;**

**"(2) Unless the Charter requires otherwise, the affirmative vote of a majority of the members shall be required for the approval of any matter, and the body shall act by a majority, two-thirds, three-fourths or other vote of all of its authorized members; ...**

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**“Therefore, the Task Force may not amend its by-laws to allow a majority of members present at a meeting - rather than a majority of the full-authorized membership of the Task Force-to make substantive decisions.” (Emphasis added.)**

Whether or not §4.14(b) applies to the SOTF, the word “authorized” in Mr. Owen’s conclusion (2) is not found in §4.104(b) – a significant addition when there are vacant seats, as there have been on the SOTF for some months.

On the broader question, my answer is “no.” My opinion is that even if the City Charter “trumps” the Sunshine Ordinance Task Force, §4.104(b) does not apply to the SOTF. To be subject to §4.104(b) requirement, the SOTF must first be governed by Section 4.100 of Article IV:

“In addition to the office of the Mayor, the executive branch of the City and County shall be composed of departments, appointive boards, commissions and other units of government. To the extent law permits, each appointive board, commission, or other unit of government of the City and County established by state or federal law shall be subject to the provisions of this Article and this Charter.”

The SOTF is not part of the “executive branch,” the head of which is the Mayor. It is a *unique* autonomous body created by the voter-initiated and adopted Sunshine Ordinance, and its powers, functions and operations are governed solely by that ordinance. For that reason, many provisions of Article IV do not and could not apply to the SOTF, particularly those in Section 4.102, which imposes certain duties on each “appointive board, commissions other unit of government.” Some of those duties are directly contrary to provisions in the Sunshine Ordinance pertaining to the SOTF, its relationship to the Mayor and its specific functions.

For example, under §4.102, the SOTF would be required to: (1) formulate and approve plans and programs and set policies consistent with the overall City and County objectives, **as established by the Mayor**, (2) develop an Annual Statement of Purpose outlining its areas of jurisdiction and goals, **subject to review and approval by the Mayor**, (3) approve applicable departmental budgets, (4) **submit to the Mayor** at least three qualified applicants, ... for the position of department head, (5) **failure to act on the Mayor's recommendation for removal of a department head... and constitutes official misconduct**, (6) **exercise such other ...duties** as shall be prescribed by the **Board of Supervisors** and (7) deal with administrative matters solely through the department head **and any interference herein prohibited on the part of any member shall constitute official misconduct.** (Emphasis added.)

The SOTF, as a body, can either accept the City Attorney’s legal advice - by how many votes? - and not pursue the six-vote minimum requirement any further or it can reject the City Attorney’s legal advice and adopt a set of rules that conform to the norm; i.e., a majority of filled seats constitute a quorum for a meeting and the vote of majority of that quorum constitutes action taken.

The Third Question: If the answer is “yes” - that the SOTF quorum and voting procedures are governed by Charter §4.104(b) - how should those rules be followed by the SOTF in its quorum and voting procedures? In deciding that question, one must also take into account, DCA Threet’s advice that in determining the number of SOTF members for purposes of §4.104(b), vacant seats are counted.

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As noted above, the combination of requiring at least six votes in favor of a complainant's claim of a violation, plus the fact that there is an automatic "no" for each absent member and, currently, two more "nos" because two seats are vacant is simply not acceptable.

In my recent Memorandum to the SOTF members, my conclusions were that the requirements that a motion to find a "violation" and the complainant prove a "violation" when the dispute is whether a public record is exempt from disclosure were unnecessary. Rather, the motion should be for a "determination" whether the specific exemption relied on by the respondent applies; and the burden of carrying that burden forward should rest on the respondent, rather than requiring the complainant to establish the negative, that the claimed exemption does not apply.

In its simplest terms, the complainant would assert that the respondent has refused to provide the requested public records. The respondent would then cite the particular exemption that it claims applies to those records. At the hearing, the respondent would speak to the exemption issue first and the complainant would rebut the respondent's argument. The motion to be voted on would be "Does the claimed exemption apply to the requested records." To prevail the respondent would need at least six "yes" votes. Once this procedure was adopted, the playing field would be leveled and there would be no need to dispute the advice from the City Attorney's office on the voting issue.

However, there remain the other instances when the Sunshine Ordinance provisions are inconsistent or incompatible with those in the Charter, such the six-vote minimum, and those too will have to be addressed. For that reason, I have this final suggestion:

The SOTF should seek out an independent national law firm (with an office in San Francisco) to review the basic questions on a *pro bono* basis and give its opinion either way.

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CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA  
City Attorney

OFFICE OF THE CITY ATTORNEY

THOMAS J. OWEN  
Deputy City Attorney

DIRECT DIAL: (415) 554-4679  
E-MAIL: thomas.owen@sfgov.org

## MEMORANDUM

TO: Honorable Members  
Sunshine Ordinance Task Force

FROM: Thomas J. Owen  
Deputy City Attorney

DATE: May 21, 2007

RE: Application of Charter Section 4.104 to the Sunshine Ordinance Task Force

## QUESTION PRESENTED

Is the Sunshine Ordinance Task Force ("Task Force") subject to the requirements of Charter Section 4.104 that:

- (1) A quorum shall consist of the presence of a majority of the members of an appointive board, commission or other unit of government;
- (2) The affirmative vote of a majority of the members shall be required for the approval of any matter, and the body shall act by a majority, two-thirds, three-fourths or other vote of all of its authorized members; and
- (3) Each member present at a regular or special meeting shall vote "yes" or "no" when a question is put, unless excused from voting by a motion adopted by a majority of the members present?

## SHORT ANSWER

Yes, the Task Force is an "appointive board, commission or other unit of government" subject to the provisions of Charter Section 4.104.

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CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

TO: Honorable Members  
Sunshine Ordinance Task Force  
DATE: May 21, 2007  
PAGE: 2  
RE: Application of Charter Section 4.104 to the Sunshine Ordinance Task Force

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### BACKGROUND

The Sunshine Ordinance Task Force is considering an amendment to its by-laws that would allow a majority of members present at a meeting to make substantive decisions on behalf of the Task Force, so long as a quorum of the Task Force was present. The Task Force is considering this amendment as an alternative to the current rule requiring a majority vote of the full authorized membership of the Task Force in order to adopt a substantive proposal, as provided in Charter Section 4.104(b). The Task Force has asked for advice on whether it is subject to the requirements of Section 4.104(b).

**The Sunshine Ordinance Task Force.** Section 67.30 of the San Francisco Administrative Code creates a Sunshine Ordinance Task Force. The Task Force consists of eleven voting members appointed by the Board of Supervisors. The Mayor or his or her designee, and the Clerk of the Board of Supervisors or his or her designee, serve as non-voting members of the task force.

The Task Force is more than an advisory body to the Board of Supervisors. As the Sunshine Ordinance itself states, "Only a strong Open Government and Sunshine Ordinance, **enforced by a strong Sunshine Ordinance Task Force**, can protect the public's interest in open government." (SF Admin. Code § 67.1(e).)<sup>1</sup>

The Task Force is responsible for advising the Board of Supervisors, but it is also charged with providing information to other City departments on appropriate ways in which to implement Chapter 67 of the Administrative Code, the Sunshine Ordinance ("Ordinance"). (§ 67.30(c).) The Task Force is charged with developing appropriate goals to ensure practical and timely implementation of the Sunshine Ordinance, and with proposing appropriate amendments to the Board of Supervisors. (*Id.*) The Task Force shall, from time to time as it sees fit, issue public reports evaluating compliance with the Ordinance and related California laws by the City or any department, office, or official thereof; it must report to the Board of Supervisors at least once annually on any practical or policy problems encountered in the administration of the Ordinance. (*Id.*)

The Task Force must hear and decide appeals from persons who claim that they have been wrongfully denied access to public records. (§ 67.21(e).)

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<sup>1</sup> All subsequent citations shall be to the San Francisco Administrative Code, unless otherwise indicated.



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CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

TO: Honorable Members  
Sunshine Ordinance Task Force  
DATE: May 21, 2007  
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RE: Application of Charter Section 4.104 to the Sunshine Ordinance Task Force

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In addition to the power specified above, the Task Force possesses such powers as the Board of Supervisors may confer upon it by ordinance or as the People of San Francisco shall confer upon it by initiative. (*Id.*) Administrative Code Chapter 12L authorizes the Task Force to issue advisory opinions regarding compliance with the Chapter to persons seeking access to financial information from non-profit organizations doing business with the City. (§ 12L.5(b).)

The Administrative Code specifically identifies members of the Task Force as "officers of the City and County." (§ 1.50.) Members are eligible to participate in the City's Health Service System under Administrative Code Section 16.700(c)(37).

**Charter Section 4.104.** Charter Section 4.104 includes three subsections. Subsection (a) addresses some of the powers and duties of "executive branch" boards and commissions:

Unless otherwise provided in this Charter, ***each appointive board, commission or other unit of government of the executive branch*** of the City and County shall:

1. Adopt rules and regulations consistent with this Charter and ordinances of the City and County. No rule or regulation shall be adopted, amended or repealed, without a public hearing. At least ten days' public notice shall be given for such public hearing. All such rules and regulations shall be filed with the Clerk of the Board of Supervisors.
2. Hold meetings open to the public and encourage the participation of interested persons. Except for the actions taken at closed sessions, any action taken at other than a public meeting shall be void. Closed sessions may be held in accordance with applicable state statutes and ordinances of the Board of Supervisors.
3. Keep a record of the proceedings of each regular or special meeting. Such record shall indicate how each member voted on each question. These records, except as may be limited by state law or ordinance, shall be available for public inspection. [Emphasis added.]

Subsection (b) of Section 4.104 addresses quorum and voting requirements for multi-member bodies "or other unit[s] of [City] government":

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CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

TO: Honorable Members  
Sunshine Ordinance Task Force  
DATE: May 21, 2007  
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The presence of a majority of the members of ***an appointive board, commission or other unit of government*** shall constitute a quorum for the transaction of business by such body. Unless otherwise required by this Charter, the ***affirmative vote of a majority of the members*** shall be required for the approval of any matter, except that the rules and regulations of the body may provide that, with respect to matters of procedure the body may act by the affirmative vote of a majority of the members present, so long as the members present constitute a quorum. All appointive boards, commissions or other units of government shall act by a majority, two-thirds, three-fourths or other vote of all members. Each member present at a regular or special meeting shall vote "yes" or "no" when a question is put, unless excused from voting by a motion adopted by a majority of the members present. [Emphasis added.]

(Subsection (c) of Section 4.104, not as issue in this analysis, requires the Board of Supervisors to provide by ordinance for parental leave policies for members of "appointive boards, commissions or other units of government, . . .")

This memorandum addresses the question whether Section 4.104(b) applies to the Sunshine Ordinance Task Force.

### ANALYSIS

Section 4.104(a) applies to "each appointive board, commission or other unit of government of the executive branch." But Section 4.104(b) is not specifically limited to the "executive branch." It addresses any "appointive board, commission or other unit of government." (See also SF Charter § 4.102 [also addressed to the executive branch]; cf. SF Charter § 4.101 [addressing "each appointive board, commission or advisory body of any kind established by this Charter or legislative act of the United States of America, the State of California or the Board of Supervisors"].) It is a well-recognized principle of statutory construction that when the legislature (or here, the electorate) has carefully employed a term in one place and has excluded it in another, that term should not be implied where it was excluded. (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 725.) While the Task Force is not specifically named a "board" or "commission", it clearly falls within the same class of entities—it is a formally-established, multi-member body existing as part of City government to conduct City business or otherwise exercise part of the City's sovereign power.

## Exhibit D page 16

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

TO: Honorable Members  
Sunshine Ordinance Task Force  
DATE: May 21, 2007  
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RE: Application of Charter Section 4.104 to the Sunshine Ordinance Task Force

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As described above, the Task Force does not simply advise the Board of Supervisors. The Task Force has a larger role in helping enforce the Sunshine Ordinance. (§ 67.1(e).) It hears and decides appeals filed by citizens who feel that a City officer or department has unlawfully refused to produce a particular document or documents. (§ 67.21(e).) It provides information to all other City departments on appropriate ways to implement the Sunshine Ordinance. (§ 67.30(c).) It develops goals to ensure practical and timely implementation of the Sunshine Ordinance, and may propose appropriate amendments to the Ordinance to the Board of Supervisors. (*Id.*) It monitors and reports on City compliance with the Ordinance and related California laws. (*Id.*) In addition, the Task Force is authorized to issue advisory opinions regarding compliance with Administrative Code Chapter 12L. (§ 12L.5(b).)

In carrying out these duties, the Task Force conducts City business and exercises part of the City's sovereign powers. It plays an active role in the ongoing implementation and enforcement of a City ordinance, both as to application of the existing law to particular facts and circumstances and as to the development and broader interpretation of the law. The Task Force accepts and hears complaints from the citizenry at large, addressing the conduct of any City department insofar as compliance with the Sunshine Ordinance is concerned. It is not subject to the direct oversight of any other City officer or agency.

It is noteworthy in this context that members of the Task Force are specifically identified as "officers of the City and County" in Administrative Code Section 1.50. A public office is ordinarily and generally defined to be the right, authority, and duty, created and conferred by law, the tenure of which is not transient, occasional, or incidental, by which for a given period an individual is invested with power to perform a public function for the benefit of the public. (*Dibb v. County of San Diego* (1994) 8 Cal.4<sup>th</sup> 1200, 1212.) The most general characteristic of a public officer, which distinguishes him from a mere employee, is that a public duty is delegated and entrusted to the officer, as agent, the performance of which is an exercise of a part of the governmental functions of the particular political unit for which the officer, as agent, is acting. (*Id.*) Two elements are almost universally regarded as essential to a determination of whether one is a 'public officer: First, a tenure of office that is not transient, occasional or incidental, but is of such a nature that the office itself is an entity in which incumbents succeed one another, and, second, the delegation to the officer of some portion of the sovereign functions of government, either legislative, executive, or judicial. (*Id.*; internal quotations and citations omitted.)

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CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

TO: Honorable Members  
Sunshine Ordinance Task Force  
DATE: May 21, 2007  
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RE: Application of Charter Section 4.104 to the Sunshine Ordinance Task Force

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In *Dibb*, the court concluded that members of a county's "civilian law enforcement review board" were public or county officers because they were delegated the duty to hold hearings, administer oaths and issue subpoenas, all in order to investigate, on behalf of the board of supervisors, complaints about the official conduct of employees of the county sheriff's and probation departments. (*Id.*) This authorization of investigative power satisfied the requirement that the members exercise "some portion of the sovereign functions of government" or "part of the governmental functions" of the county in order to qualify as public officers. (*Id.*) "Accordingly, we conclude that members of the CLERB possess the essential attributes of county officers: They are appointed under the law for a fixed term of office and are delegated a public duty to investigate specified citizen complaints against county sheriff and probation department employees, and to make recommendations to the board of supervisors." (*Id.*)

The Sunshine Ordinance Task Force is created in writing and by law as a permanent, on-going body. (§ 67.30(a).) Members are appointed to fixed terms and incumbents succeed one another. (§ 67.30(b).) As part of their duties, they investigate and consider, on behalf of the City, citizen complaints against City departments in general regarding compliance with the Sunshine Ordinance and may make recommendations to other City officials regarding further enforcement. (§ 67.30(c).) Under the analysis in *Dibb*, members of the Task Force are public officers and exercise "some portion of the sovereign functions of government" or "part of the governmental functions" of the City.

Given the responsibilities of the Sunshine Ordinance Task Force and the status of its members as City officers, we conclude that the Task Force is an "appointive board, commission or other unit of government" within the meaning of subsection (b) of Charter Section 4.104.

### CONCLUSION

Since the Sunshine Ordinance Task Force is an "appointive board, commission or other unit of government" within the meaning of Charter Section 4.104(b), it is subject to the requirements that:

- (1) A quorum shall consist of the presence of a majority of the members of an appointive board, commission or other unit of government;

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CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

TO: Honorable Members  
Sunshine Ordinance Task Force  
DATE: May 21, 2007  
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RE: Application of Charter Section 4.104 to the Sunshine Ordinance Task Force

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- (2) Unless the Charter requires otherwise, the affirmative vote of a majority of the members shall be required for the approval of any matter, and the body shall act by a majority, two-thirds, three-fourths or other vote of all of its authorized members; and
- (3) Each member present at a regular or special meeting shall vote "yes" or "no" when a question is put, unless excused from voting by a motion adopted by a majority of the members present.

Therefore, the Task Force may not amend its by-laws to allow a majority of members present at a meeting—rather than a majority of the full-authorized membership of the Task Force—to make substantive decisions.

cc: Ernie Llorente

# Exhibit D page 19

Date: April 26, 2011

Item No. 1

File No. \_\_\_\_\_

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

<input checked="" type="checkbox"/>	<b>Rules Committee recommendation</b>
<input type="checkbox"/>	_____
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Completed by: Chris Rustom

Date: April 22, 2011

**\*This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

\*\* The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

## Exhibit D page 20



"David Snyder"  
<DSnyder@sheppardmullin.com>

04/19/2011 11:11 AM

To <sotf@sfgov.org>

cc

bcc

Subject FW: 'Majority vote' definition

Chris,

Could you please include this email in the packet for the April 26 regular meeting? Thank you.

In response to Rick's request of March 23 (see email below), I have put together some thoughts about the Rules Committee's proposal to change the Sunshine Ordinance Task Force bylines to redefine "majority vote."

I have reviewed the May 21, 2007 memorandum by Deputy City Attorney Thomas J. Owen; the December 7, 2010 and January 21, 2011 memoranda by Allen Grossman, and the February 14, 2011 report by Bruce Wolfe, all regarding the "majority vote" rule(s) of San Francisco City Charter Section 4.104.

I have not conducted any independent legal research, other than reviewing the pertinent Sunshine Ordinance and City Charter provisions. What follows is therefore an opinion based solely on my reading of the analyses noted above. I believe that to fully investigate this issue would take a considerable amount of time.

As a policy matter and a personal preference, I dislike the "majority vote" rule in the San Francisco City Charter as it has been applied by the Sunshine Ordinance Task Force. I think it can and has lead to nonsensical results. However, I have seen nothing in the analyses I have read to suggest that DCA Owen's analysis is incorrect as a matter of law. As much as I would personally like the rule to be different, I do not see a principled or credible way to avoid it. It is my view -- again, based solely on my reading of the above-noted analyses -- that a) the SOTF is subject as a general matter to the provisions of the City Charter; b) the SOTF is subject to Charter Section 4.104, and c) the interpretation of 4.104 which the City Attorney has espoused is legally correct.

Based on these three conclusions, I must come -- to my personal regret -- to the conclusion that DCA Owen's legal conclusions are sound, and that the rule as it has been interpreted is correct under the City Charter.

Sincerely,

David

---

David Snyder  
Four Embarcadero Center  
17th Floor  
San Francisco, CA 94111

## Exhibit D page 21

DSnyder@sheppardmullin.com  
Direct: 415.774.3117  
Fax: 415.403.6240

Circular 230 Notice: In accordance with Treasury Regulations we notify you that any tax advice given herein (or in any attachments) is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of (i) avoiding tax penalties or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein (or in any attachments).

Attention: This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

-----

From: Richard Knee [mailto:rak0408@earthlink.net]  
Sent: Wednesday, March 23, 2011 1:27 PM  
To: David Snyder  
Cc: SOTF@SFGov.org; SFCityAtty\_Threet Jerry  
Subject: 'Majority vote' definition

David,

The SOTF Rules Committee is recommending a bylaws change to redefine "majority vote" on substantive matters as 50%+1 of the members present at a meeting.

Since you are our voting-member attorney, your input on this will be extremely important. Accordingly, I strongly encourage you to submit your thoughts on the matter to Chris Rustom by Tuesday, April 19, for inclusion in the information packet for the April 26 regular meeting.

Please do NOT communicate your thoughts on the matter directly to me or any other SOTF member, in order to avoid seriatim violation.

Thanks,  
Rick

C: Chris Rustom, Jerry Threet



## Exhibit D page 22



Richard Knee  
<rak0408@earthlink.net>  
04/17/2011 12:41 PM

To SOTF@SFGov.org  
cc  
bcc  
Subject Fwd: Re: 'Majority' vote (one more time) – CORRECTION

Chris,

If there is still time to include the e-mail chain below in the information packet for the April 26 (not April 21) meeting, please do so. Otherwise, please print it out and distribute to SOTF members and public attendees at the meeting.

Thanks,  
Rick

----- Original Message -----

**Subject:** Re: 'Majority' vote (one more time)  
**Date:** Fri, 15 Apr 2011 16:39:13 -0700  
**From:** Terry <terry@calaware.org>  
**To:** Peter Scheer <pscheer@earthlink.net>  
**CC:** Richard A. Knee <rak0408@earthlink.net>

No, I agree there's no legal bar to a procedural standard adopted to govern the decisional process of an essentially advisory body in municipal government. It forecloses no one's rights and, if proven unworkable or fraught with unforeseen problems, can always be tuned back to another rule.

On Apr 15, 2011, at 4:27 PM, Peter Scheer wrote:

> Rick,  
>  
> I don't see why not. It's a policy choice. Your current policy assures a near-consensus for all substantive actions. The new policy allows action to be taken by a minority of all members, but also makes it harder for a dissenting minority to block action (simply by not attending, like the Democrats in the Wisconsin legislature).  
>  
> These governance choices are not addressed by the Brown Act. I'm not aware of other laws that might impose quorum/majority requirements.  
>  
> Let's run this by Terry and see if he knows of anything that could restrict your choices.--Peter

## Exhibit D page 23

>  
>  
>

---

-  
> Peter Scheer, Executive Director  
> FIRST AMENDMENT COALITION  
> 534 4th St., Suite B  
> San Rafael, CA 94901  
> 415.460.5060 / 415.886.7081 (direct)  
> [pscheer@firstamendmentcoalition.org](mailto:pscheer@firstamendmentcoalition.org)  
> <http://www.firstamendmentcoalition.org>  
>

---

-  
> Defending freedom of speech and the public's right  
> to know. Please support our work: <http://bit.ly/dy0dEI>  
>

---

-  
>  
> On Apr 15, 2011, at 3:06 PM, Richard Knee wrote:  
>  
> SF Sunshine Ordinance Task Force will soon weigh a proposed  
bylaw that would establish a "majority" vote on substantive  
matters as 50%+1 of those attending a meeting, as long as a  
quorum is present.  
>  
> The Task Force has 11 seats, meaning a quorum is 6 or more, and  
the rule we've always followed is that 6 or more votes are  
required to approve a motion on a substantive matter --  
regardless of whether any seats are vacant and whether 9 or fewer  
members are at a meeting.  
>  
> Under the proposed bylaw, the number of votes required for  
approval would be 4 if only 6 or 7 members were present, and 5 if  
8 or 9 members were present.  
>  
> Would that pass legal muster?  
>  
> Thanks,  
> Rick  
>

**SAN FRANCISCO SUNSHINE ORDINANCE TASK FORCE**

**BY-LAWS**

**Article I – Name and Purpose**

**Section 1. Name**

The name of this Task Force shall be the Sunshine Ordinance Task Force.

**Section 2. Purpose**

The Sunshine Ordinance Task Force is established by Chapter 67 of the San Francisco Administrative Code. The Task Force shall protect the public's interest in open government and shall carry out the duties enumerated in Chapter 67 of the San Francisco Administrative Code.

**ARTICLE II – OFFICERS**

**Section 1. Officers**

The Officers of this Task Force shall be a Chair and a Vice Chair.

**Section 2. Terms of Office**

The Officers shall hold offices for one year and until their successors are elected.

**Section 3. Election of Officers**

The Officers shall be elected at the first regular meeting of the Task Force held on or before July 1 of each year, or at a subsequent meeting, the date of which shall be fixed by the Task Force at the first regular meeting on or after July 1 of each year. If any Task Force office becomes vacant, that office shall be filled at the first meeting after the vacancy occurs.

**ARTICLE III – DUTIES OF OFFICERS**

**Section 1. Duties of the Chair**

The Chair shall preside at all meetings of the Task Force. The Chair, working with members of the Task Force and the staff, shall oversee the preparation and distribution of the agenda for the Task Force meetings. The Chair shall appoint all Committees and their chairs and shall perform all other duties as prescribed by the Task Force or by the By-Laws which are necessary or incident to the office. The Chair of the Task Force shall encourage Task Force members to participate on committees and shall ensure broad and diverse representation of Task Force members on all committees.

**Section 2. Duties of the Vice Chair**

## Exhibit D page 25

In the event of the absence, or inability of the Chair to act, the Vice Chair shall preside at the meetings and perform the duties of the Chair. In the event of the absence of the Chair and the Vice Chair, the remaining Task Force members shall appoint one of the members to act temporarily as Chair.

### ARTICLE IV – MEETINGS

#### Section 1. Regular Meetings

Regular meetings of the Task Force shall be held on the fourth Tuesday of the month at 4:00 p.m. at City Hall, 1 Dr. Carlton B. Goodlett Place, Room 408, San Francisco, California.

#### Section 2. Special Meetings

The Chair or a majority of the members of the Task Force may call special meetings.

#### Section 3. Notice of Meetings

The agendas of all regular meetings and notices and agendas of all special meetings shall be posted on the Task Force web site, at the meeting site, the San Francisco Main Library, Government Information Center and the office of the Task Force. Agendas and notices shall be mailed to each Task Force member and any person who files a written request for such notice with the Task Force.

#### Section 4. Cancellation of Meetings

The Chair may cancel a meeting if she or he is informed by the Task Force Administrator that a quorum of the body will not be present or if the meeting date conflicts with a holiday or other responsibilities of the Task Force members. Notices of cancellation shall be posted on the Task Force web site, at the meeting site, the San Francisco Main Library, Government Information Center, and the office of the Task Force. If time permits, notices of meeting cancellations shall be mailed to all members of the public who have requested, in writing, to receive notices and agendas of Task Force meetings.

#### Section 5. Conduct of Meetings

(a) All Task Force meetings shall be conducted in compliance with all applicable laws, including but not limited to the Ralph M. Brown Act (Government Code Section 54950 et. seq.), the San Francisco Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the Task Force's By-Laws. Except where state or local laws or other rules provide to the contrary, meetings shall be governed by Robert's Rules of Order.

(b) Subject to the availability of funds, the Task Force shall comply with the provisions of the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) that apply to Charter boards and commissions.

(c) When a member of the Task Force desires to address the Task Force, she or he shall seek recognition by addressing the Chair, and when recognized, shall proceed to speak. The member shall confine her or his comments or remarks to the question before the Task Force.

## Exhibit D page 26

(d) Cell phones and pagers shall be turned off during meetings of the Task Force. The Chair may issue a warning to any member of the public whose pager or cell phone disrupts the Task Force meeting. In the event of repeated disruptions caused by pagers and cell phones, the Chair shall direct the offending member of the public to leave the meeting.

### **Section 6. Setting Agendas**

The Task Force Administrator, at the direction of the Chair, shall prepare the agenda for meetings. The agenda for all regular meetings shall contain an item during which Task Force members may request items for the Task Force to consider at future meetings.

### **Section 7. Action at a Meeting; Quorum and Required Vote**

The presence of a majority of the members (six members) of the Task Force shall constitute a quorum for all purposes. The affirmative vote of a majority of the members of the Task Force ~~present (six votes)~~ shall be required for the approval of all substantive matters. Procedural motions require an affirmative vote of a majority of the members present. If a quorum is not present, no official action may be taken, except roll call and adjournment.

### **Section 8. Voting and Abstention**

Task Force members must be present to vote and participate. Teleconference participation is permitted as provided by Section 4.104 of the Charter. Each member present at a Task Force meeting shall vote "Yes" or "No" when a question is put, unless the member is excused from voting on a matter by a motion adopted by a majority of the members present or the member has a conflict of interest that legally precludes participation in the discussion and vote. The Task Force shall take action on items on the agenda by roll call, voice vote or by show of hands. The minutes shall reflect how each Task Force member voted on each item.

### **Section 9. Order of Business**

The order of business at Task Force meetings may be:

- Call to Order
- Roll Call
- Approval of Meeting Minutes
- Hearings on the Jurisdiction and Hearing on the merits of Complaints
- Committee Reports
- Other Policy Matters
- Administrator's Report
- Future Agenda Items

The order of items on the agenda may be changed by action of the Task Force at any meeting. Public comment shall be specially set as the first new item considered after 5:00 p.m.

### **Section 10. Hearing Procedures for Complaints**

The Complaint Committee and the full Task Force hearing complaints shall follow the following procedures.

1. Complainant presents his/her facts and evidence. (5 minutes)

## Exhibit D page 27

- Other parties of Complainant present facts and evidence. (Up to 3 minutes each)
2. City responds. (5 minutes)  
Other parties of City respond. (Up to 3 minutes each)  
(The above total speaking times for Complainant and City to be the same.)
3. Matter is with the Task Force for discussion and questions to parties.
4. Respondent and Complainant present clarification/rebuttal based on Task Force discussions. ( 3 minutes)
5. Matter is with the Task Force for motion and deliberation.
6. Public Comment (Excluding Complainant and City response and witnesses.)
7. Vote by the Task Force (Public comment at the discretion of the Chair on each motion and/or new motion if vote fails.)

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

### Section 11. Public Comment

Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations. Any person speaking during a public comment period may supply a brief written summary of their comments, which shall, if no more than 150 words, be included in the minutes. [§67.16]

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing; these comments will be made a part of the official public record. [§67.7-1 (c)]

The Task Force and all committees of the Task Force shall hold meetings open to the public in full compliance with state and local laws. The Task Force encourages the participation of all interested persons. Members of the public may address the Task Force on any matter within the subject matter jurisdiction of the Task Force for up to three minutes during public comment. The Chair may limit the time permitted for public comment consistent with state and local laws.

### Section 12. Public Testimony

The Task Force and all committees of the Task Force shall hold meetings open to the public in full compliance with state and local laws. The Task Force encourages the participation of all interested persons. Members of the public may comment on every item on the Task Force agenda. Each person wishing to speak on an item before the Task Force shall be permitted to be heard once for up to three minutes.

## ARTICLE V -- TASK FORCE RECORDS

### Section 1. Minutes

Minutes shall be taken at every regular and special Task Force meeting and shall comply with the provisions of the San Francisco Sunshine Ordinance, including the provisions that apply to Charter boards and commissions. (See San Francisco Administrative Code, Chapter 67.16) Minutes shall be approved by the majority vote of the Task Force. In the event a committee does not meet for a period of six months after

## Exhibit D page 28

its last meeting the minutes of that meeting shall be agendized at the full Task Force for review and approval.

### Section 2. Public Review File

The Task Force shall maintain a public review file in compliance with the San Francisco Sunshine Ordinance. [See San Francisco Administrative Code, Section 67.23.]

### Section 3. Records Retention Policy

The Task Force shall prepare, maintain and adopt a records retention and destruction policy as provided in Section 8.3 of the San Francisco Administrative Code.

### Section 4. Tape Recordings

The Task Force shall audio record all regular and special meetings of the Task Force. The audio recordings shall be maintained in accordance with the San Francisco Sunshine Ordinance. [See San Francisco Administrative Code, Section 67.14(b)]

## ARTICLE VI -- COMMITTEES

### Section 1. Standing Committees

Upon approval by a majority of the members of the Task Force, the Task Force may form standing committees to advise the Task Force on its on-going functions. The standing committees shall be composed of members of the Task Force. Unless specified otherwise by the Task Force, the Chair of the Task Force shall appoint or remove the Chair and members of the Standing Committees~~name the Chair of the Standing Committees and its members~~. The Chair of the Task Force shall encourage Task Force members to participate on committees and shall ensure broad and diverse representation of Task Force members on all committees.

The Task Force shall establish the following Standing Committees: Rules Committee, Education, Outreach and Training Committee, Complaints Committee and Compliance and Amendments Committee.

#### (a) Rules Committee

The Rules Committee shall review matters related to amendments to the Task Force by-laws and procedures for Task Force meetings and shall assist the Chair of the Task Force to ensure that all annual objectives enumerated in the Sunshine Ordinance are met by the Task Force.

#### (b) Education, Outreach and Training Committee

The Education, Outreach and Training Committee may monitor compliance with the Orders of Determination adopted by the Task Force; shall make recommendations to the Task Force regarding outreach and publicity to the media and to the general public about the Sunshine Ordinance and the Task Force.

#### (c) Complaint Committee

The Complaint Committee shall monitor the complaint process and make recommendations to the Task Force regarding how the complaints should be handled.

## Exhibit D page 29

### (d) Compliance & Amendments Committee

The Compliance and Amendments Committee shall ~~may~~ monitor compliance with the Orders of Determination adopted by the Task Force; shall recommend to the Task Force amendments to the Sunshine Ordinance regarding enforcement of the Orders of Determination; and shall consider and recommend any other additions, amendments, and changes to the Sunshine Ordinance as provided by members of the Task Force and from the general public. (Added 8/27/02)

## Section 2. Special or Ad Hoc Committees

Upon approval by a majority of the members of the Task Force, the Task Force may form special or ad hoc committees. Special committees shall be formed for a specific purpose and cease to exist after completion of a designated task. Special committees may be composed of members of the Task Force and may include members of the public, city officials or city employees as well.

## ARTICLE VII – ATTENDANCE

Members of the Task Force shall notify the Task Force Administrator if she or he is unable to attend a regular or special meeting of the Task Force. The Administrator of the Sunshine Ordinance Task Force shall notify any member who misses two meetings in any twelve month period of time that if the third absence occurs, the Task Force shall may notify the Board of Supervisors of the member's lack of attendance. If a member of the Task Force misses more than three regular meetings in any twelve-month period of time, the Task Force ~~shall may~~ notify the Board of Supervisors and request that action be taken to remove the member from the Task Force. ~~The Administrator of the Sunshine Ordinance Task Force shall notify any member who misses two meetings in any twelve month period of time that if the third absence occurs, the Task Force may notify the Board of Supervisors of the member's lack of attendance.~~

## ARTICLE VIII - AMENDMENT OF BY-LAWS

The By-Laws of the Task Force may be amended by a vote of a majority of the members of the Task Force after presentation of the proposed amendments as an agenda item at a meeting of the Task Force. The Task Force shall give ten days notice prior to final action by posting on the Sunshine Ordinance Task Force website and by sending a copy to the Public Library Government Information Center before considering any amendments to its by-laws.

Adopted 8/22/2000  
Amended 8/27/2002  
Amended 3/25/2008  
Amended 4/28/2009



# Exhibit E page 1

## **2021-9-1 Full SOTF Hearing Transcript starting 1:42 and ending at 1:51 on 2021-9-1 Full SOTF Hearing**

### **Mark Sullivan (3 Minute Public Comment):**

The Task Force By-Laws, Section 7. “The affirmative vote of a majority of the members of the Task Force (six) shall be required for the approval of all substantive matters.”

The Brown Act § 54952.6. defines action taken or the vote

“As used in this chapter, “action taken” means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.”

Requires a positive or negative decision to be a majority. There is no comma between positive or a negative. It does not use the word “all”. It says a “majority of members” “when sitting as a body”. The requirement of 6 votes is fine when all 11 members of the task force vote as you get that positive or negative majority. A complainant should not be at the arbitrary number of task force members seated at a hearing. The task force can fully comply with The Brown Act and change it to a majority. In the past, when the task force has failed to get 6 votes in the affirmative, it has then has taken the minority vote as a win and issued orders for the minority position. This is just wrong. It violates The Brown Act. It violates the California Constitution, reading statutes broadly for greater public access. The Sunshine Ordinance, Sec. 67.36. Sunshine Ordinance Supersedes other Local Laws “conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply.”

The by-law six votes in the affirmative is based on one sentence in the SF Municipal Code Sec. 4.104 3(b) It is a spaghetti fest of code. The next sentence in the code says “All appointive boards, commissions or other units of government shall act by a majority, two-thirds, three-fourths or other vote of all members.” The task force is an appointive unit of government and can act “by majority, or other vote of all members” The task force has the duty to comply with The Brown Act. It can change its by-laws.

Thank you for your time.

### **SOTF Chair Wolfe response:**

Just want to make a, have a response to the just previous speaker. It just a little bit history. In prior to 2012. The sunshine ordinance task force did change, its bylaws to be a simple majority.

And it was met with a lot of objection from the board, than Board of Supervisors, which then did not reappoint the entire Sunshine Ordinance Task Force members that had applied for reappointment.

## Exhibit E page 2

and where and when and none of those members were considered for a number of years.

It has been held that the word "all" as was quoted, that a majority vote all members means, it's all seats and not just those that attend or who are present at a meeting and that is up for contention. And is exactly why the Board of Supervisors and every other commission operates in the same way.

So this is, you know, not necessarily a matter that the task force will take up or has not taken up in many years because of this determination by the Board of Supervisors and the City attorney. So I just wanted to mention that in history that it's not like the Task Force's not address this issue before.

### **2022 10 5 SOTF Mark Sullivan 3 minute Public Comment**

Task force hearings should not be heard as a debate between the petitioner and the respondent weighing both sides equally.

When a complaint is received, it should be presumed to be true. This is what SOTF procedures say, "all inferences and evidence shall be viewed in the light most favorable to the petitioner". The agency has the burden of justifying the denial of access. The Courts have stated this multiple times like in Williams vs. Superior Court. The Sunshine Ordinance Sec 67.21 (e) last line "An authorized representative of the custodian of the public records requested shall attend any hearing and **Important! explain the basis for its decision to withhold the records requested.**" The question that the task force needs to ask every respondent is "What part of the law are you citing to support your decision for your action or inaction?" Then you should decide if the respondent is applying the law correctly. Everything else is unnecessary verbiage if it is not based on the law or a court case. Listening to anything else wastes time and should not be the basis for a task force decisions.

The task force should conduct itself more like a court.

Sec 67.21 (g) "In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies."

Cutting out the debate like atmosphere and cutting to the chase of the burden of proof on to the respondent with specificity of the law which applies will shorten your hearings. You will make better decisions and get more sleep.

I wish Anonymous the best tonight. The burden is on respondent to explain the basis for their decisions with specificity of law.

Thank you for your time.

## Exhibit F page 1

# Wiener's Mendacious Attack on City's Sunshine Panel

Written by Richard Knee. Posted in **Law, Opinion, Politics**

Tagged: **Board of Supervisors, Bruce Wolfe, Scott Wiener, Sunshine Ordinance Task Force**

Published on June 19, 2012 with **10 Comments**



District 8 Supervisor Scott Wiener. File photo by Luke Thomas.

By **Richard Knee**

June 19, 2012

In moving to push Bruce Wolfe off the city's Sunshine Ordinance Task Force on May 22, Supervisor Scott Wiener attacked the 11-member body in a way that was venomous and mendacious.

From the board dais, Wiener labeled the task force as anti-sunshine, accusing us of responding to an "audit" by saying, "How dare you?"

In making that statement, he lied. Twice.

First, there was no audit. An audit consists of a thorough examination of an entity's operations and their net cost or benefit, including how much funding the entity receives during a given time span, how much it spends and the uses of those expenditures. No such report exists.

Second, neither the task force nor any member of it uttered the phrase "How dare you?"

The task force did, however, issue a strong statement objecting to (a) the surreptitious manner in which

## Exhibit F page 2

Wiener asked the Budget and Legislative Analyst to “survey” all city departments on how much it costs them to comply with sunshine (i.e. open-meeting and public-records) laws and on how many hours their personnel spend at task force meetings as respondents to complaints brought by members of the public; and (b) the survey itself, which we thought was vague and inconclusive.

What prompted the survey? Wiener said he had received complaints that the task force's complaint-handling process was costing lots of overtime and keeping city personnel in City Hall late into the night.

It is true that task force meetings are often long. But that is not because the task force operates inefficiently. It is because our agendas often include upward of 10 complaints and we are duty-bound to give each a fair hearing, weighing the evidence that both sides provide in determining which, if any, provisions of local or state sunshine laws have been violated.

In addition, we get lots of public comment on virtually every matter that comes before us. A good deal of that public comment is, in fact, extremely helpful to us. But at times it stretches our meetings significantly.

Also important is that the number of complaints that the task force hears is only about a fourth or a third of those that our office receives; in most cases, our administrator is able to bring the two sides together.

Furthermore, while city personnel get overtime for attending task force meetings, task force members receive neither remuneration nor expense reimbursement for their service, which often requires juggling meeting schedules with family and job commitments.

Why does the task force receive so many complaints? There are a couple of plausible explanations. Ray Hartz Jr., a citizen watchdog of City Hall, told us recently that the task force's copious workload stems from growing public awareness of the sunshine laws and of the task force's role in upholding people's sunshine-related rights.

If that's true – and I like to believe it is – Hartz and a handful of others who regularly speak at task force meetings deserve a lot of the credit for it.

At the same time, there's another, darker factor: the task force has no authority to impose penalties on sunshine scofflaws, and the entities that have that power have never used it. So the word has spread within City Hall that one can violate the Sunshine Ordinance and skate on it.

I'm not saying that every city department, agency, board, commission etc. thumbs its nose at the letter or the spirit of open government; many, maybe most, people in City Hall agree that it's an essential component of democracy and do their utmost to further it. But there are enough perceived and actual violations to keep the task force plenty busy.

Finally, among the conclusions that the Budget and Legislative Analyst drew from the survey are the following:

- Compliance with state and local sunshine laws carried “identified” costs of about \$4.27 million to the city in calendar 2011, of which nearly \$3.28 million stemmed from adhering to state laws. So the Sunshine Ordinance added \$997,676 to the cost of compliance.

Since San Francisco's population is a bit over 805,000 the latter cost figure works out to about \$1.24 per resident per year. I'd say that's an excellent bargain.

What's more, \$4.27 million represents slightly more than 0.6 percent of the city's \$6.83 billion budget for fiscal 2011-12.

## Exhibit F page 3

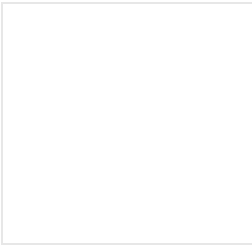
- “[I]t is likely that without the (task force), some portion of complaints would be directed to other public bodies, such as the courts, which would in turn incur costs.”

In other words, the task force, ponderous though its processes and procedures might seem, has saved the city untold hundreds of thousands of dollars in court expenses. And there's no telling how many millions of dollars the local and state sunshine laws have saved the city by enabling the exposure or prevention of backroom deals.

By the way, an audit of the task force's operations is a laudable idea. Supervisor Wiener or any other city official would serve the city well by initiating it.

Supervisor Wiener would also serve the city well by recanting his slander of the task force.

Next: how the Board of Supervisors' purge of Sunshine Ordinance Task Force incumbents was an exercise in hypocrisy.



### Richard Knee

Richard Knee is a freelance journalist based in San Francisco.

[More Posts](#)

## Exhibit G page 1

# Supervisors' Vendetta Against Sunshine Panel Incumbents

Written by Richard Knee. Posted in **Law, Opinion, Politics**

Tagged: **Ben Rosenfeld, Board of Supervisors, Bruce Wolfe, david chiu, doug comstock, eric mar, Hanley Chan, jane kim, Jay Costa, League of Women Voters, malia cohen, mark farrell, New American Media, Parkmerced, Scott Wiener, SPJ, Sunshine Ordinance Task Force**

Published on June 22, 2012 with **2 Comments**



The Sunshine Ordinance Task Force was established by voters in 1999. The purpose of the Task Force is to protect the public's interest in open government . File photo by Luke Thomas.

By **Richard Knee**

June 22, 2012

Open-government activists believe, and with good reason, that the Board of Supervisors' May 22 vote to oust three incumbents from the Sunshine Ordinance Task Force was in retaliation for a pair of task force actions that cast the board – and particularly President David Chiu and Supervisors Scott Wiener, Malia Cohen and Eric Mar – in an unfavorable light.

The activists also wonder if the vendetta will continue in the form of a ballot initiative aimed at sabotaging the ordinance, one of the nation's strongest, which city voters approved by a 58-42 percent margin in November 1999.

What's more, the board is stalling on appointments of the four task force members who, under the ordinance, must be nominated by outside organizations. Two of the nominees are incumbents, one would be a returnee

## Exhibit G page 2

and the other would be a newcomer.

In urging their colleagues on May 22 to appoint five freshmen and a returnee to the 11-member task force, President Chiu and Supervisor Wiener charged that incumbents Hanley Chan, Jay Costa and Bruce Wolfe, among others, had deliberately flouted the city Charter and the city attorney's advice by adopting a rule declaring that passage of substantive motions required a majority of those present rather than a majority of all members.

Wiener also pointed to an "audit" that, he said, showed that the task force's complaint hearing procedure was causing city personnel to log excessive overtime, and he falsely accused the task force of objecting to its own operations being subjected to sunshine. (Details appear in my previous article, available at [here](#)).

It is true that the task force's rule change, adopted in April 2011, ran counter to the city attorney's counsel. But an attorney's opinion is just that; it is an interpretation of law and does not by itself have the force of law. Furthermore, ambiguities in the Charter's relevant section, 4.104, give credibility to the argument that those who voted for the rule change believed sincerely that it was legally permissible. These people are not scofflaws.

Before I go further, I ask readers to note that:

- I have no stake in whether any or all incumbent applicants are kept on the task force, because I am not seeking reappointment. My fifth two-year term expired last April 27, and I remain as a "holdover" member until my successor is appointed. Moreover, I cast one of the two dissenting votes in the April 2011 rules-change decision.
- Though I live in the district (3) that President Chiu represents, what I state in this article is not to be construed as an endorsement for or against his reelection this November. I am a journalist and professional ethics dictate that I avoid publicly taking sides in all candidate and most issue campaigns. My votes will be based on the candidates' histories and position statements on multiple issues, not just one, and this article does not discuss any of President Chiu's opponents in this regard.

Let's assume for the moment that at least some supervisors genuinely believe that task force members willfully violated the Charter when they adopted the rule change; the board is empowered to remove task force members but no such proceeding was immediately initiated. So it's reasonable to guess that the task force's action by itself was not enough to rile any supervisor to the point of an incumbent-ouster attempt.

Fast-forward five months, to last Sept. 27, when a group of Parkmerced residents led by Pastor Gavin complained to the task force that President Chiu, the board's Land Use and Economic Development Committee – which comprises Supervisors Mar (chair), Cohen and Wiener – and then the full board had violated local and state open-meeting laws by slipping in 14 pages of amendments to a Parkmerced development contract only minutes before approving it.

In delivering a response, Supervisor Wiener's legislative aide Gillian Gillette read a prepared statement telling us that we had no right to tell the board how to vote and that in hearing the case we were overstepping our authority. The statement's content, coupled with Ms. Gillette's confrontational tone, made it apparent that Supervisor Wiener and perhaps some of his colleagues wanted to intimidate us.

We pushed back. Mr. Wolfe noted that the statement was premature because it was prepared under the assumption that the task force would find in favor of the complainants. And I told Ms. Gillette and other respondent representatives that when we receive a sunshine-related complaint, we are duty-bound under the Sunshine Ordinance to give it a fair and thorough hearing.

Ms. Gavin contended that the amendments changed the contract to the extent that the item on the LU&ED

## Exhibit G page 3

Committee's and the board's agendas no longer reflected accurately what was under consideration, and that voting on it, especially without allowing sufficient time for review by the bodies and by the public, would therefore violate city and state open-meeting laws.

The respondents countered that they had received assurances from the city attorney that the amendments did not substantially change the contract, meaning the agenda item remained accurate and therefore actionable.

The task force voted, 8-0, to find that the committee and the board had indeed violated the open-meeting laws – the ordinance and the state's Ralph M. Brown Act – and since President Chiu and Supervisor Wiener seem to give so much weight to attorneys' opinions, I'll note that one of those eight votes came from the task force's voting-member attorney, David Snyder (who let his term expire last April and did not apply for reappointment).

Sunshine advocates see the holdup on the remaining task force appointments as a power grab by the board. The board's Rules Committee, which conducts the initial vetting of applicants to city policy and advisory bodies, is for the first time ever demanding that the nominating organizations submit multiple names for each seat. The groups appear to be standing their ground. They and their nominees are:

- The Society of Professional Journalists, Northern California chapter, which has nominated attorney Ben Rosenfeld for Seat 1 and journalist Doug Comstock for Seat 2. Comstock would be my successor. He is a past chair of the task force.
- New America Media, which has nominated journalist Suzanne Manneh for reappointment to Seat 4.
- The League of Women Voters of San Francisco, which has nominated Allyson Washburn for reappointment to Seat 5.

The excuse that Supervisor Mark Farrell and Rules Committee chair Jane Kim gave for continuing the appointments "to the call of the chair" was that they wanted nominee lists to create an opportunity to bring more racial/ethnic diversity to the task force.

Certainly, diversity is a laudable goal but it is not among the criteria that the organizations must weigh in making their choices for those specific seats.

Furthermore, Supervisors Farrell and Kim's argument rings hollow, given that Ms. Manneh is a Palestinian-American fluent in Arabic and Spanish, and that the supervisors could have reappointed Mr. Chan, who is Chinese-American. Dr. Washburn and Messrs. Rosenfield and Comstock are Anglo.

Also, there is an element of diversity that the board pointedly ignored in making the latest round of appointments and that is, in fact, mandated by the ordinance: at all times, the task force must include at least one member with a physical disability.

The board could easily have complied by reappointing Mr. Wolfe. Instead, it has frozen the task force in its tracks, at least for the moment, because worries that the absence of a physically disabled member might result in any actions being invalidated have prompted the body to put off all substantive business, including a sizable backlog of complaints.

Another mistake the board made was appointing the returnee mentioned in the fourth paragraph of this article. I won't identify the person by name, though most readers, including him, probably know whom I mean. I will say that he has a very thorough knowledge of sunshine law that has often proved helpful to the task force and to other city boards and commissions.

But he nitpicks – a trait he has openly admitted – and he seems to think that rules of procedure apply to him



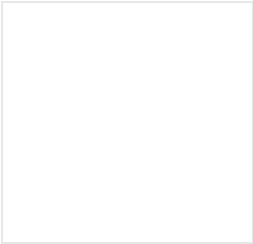
## Exhibit G page 4

only when he finds it convenient. In a complaint-related case several years ago, he disclosed that he was friends with the respondent and had had a private conversation with the respondent on the matter at hand, but he went against the deputy city attorney's advice to recuse himself.

That appointment, then, provides further evidence that the purported reasons for bouncing the task force incumbents – shortening meetings, and complying with the law and with the city attorney's advice – are a smokescreen.

Next: Did the task force violate the city Charter? Ambiguities in the Charter raise the question.

---



### **Richard Knee**

Richard Knee is a freelance journalist based in San Francisco.

**[More Posts](#)**

# Exhibit H page 1

**Subject:** RE: Question and Public Record Request "identifying the existence, form, and nature of any records or information maintained by, available to"  
**From:** "Wilson, Eamonn (ETH)" <eamonn.wilson@sfgov.org>  
**Date:** 4/27/2023, 8:55 AM  
**To:** "info@sfneighborhoods.net" <info@sfneighborhoods.net>  
**CC:** "Willett, Eric (ETH)" <eric.willett@sfgov.org>

Good morning,

I am the public information officer for the Ethics Commission and am responding on the Commission's behalf to your request below.

Regarding your question about the applicability of Admin. Code Sec. 67.35(d), this code section does not establish the Ethics Commission as having jurisdiction for the enforcement of Sunshine Ordinance provisions beyond allegations of willful violations by City elected officials and Department Heads provided by Sec. 67.34 or the Show Cause hearing process (see Ethics Commission [Enforcement Regulations](#) Section 10).

Regarding your request for a statement describing investigative records, under SF Charter Sec. C3.699-13(a), Ethics Commission investigations must be conducted in a confidential manner and records of any investigation are considered confidential information. Any Commission employee who discloses information about any preliminary investigation shall be deemed guilty of official misconduct. Therefore, the Commission has withheld any records associated with the investigation or any description of the nature of those confidential investigative records.

Thank you,

**Eamonn Wilson**

Senior Investigator/Legal Analyst  
San Francisco Ethics Commission  
415-252-3116 | [sfethics.org](mailto:info@sfethics.org)  
[eamonn.wilson@sfgov.org](mailto:eamonn.wilson@sfgov.org)



---

**From:** sfneighborhoods.net <[info@sfneighborhoods.net](mailto:info@sfneighborhoods.net)>  
**Sent:** Monday, April 24, 2023 2:19 PM  
**To:** Willett, Eric (ETH) <[eric.willett@sfgov.org](mailto:eric.willett@sfgov.org)>  
**Subject:** Question and Public Record Request "identifying the existence, form, and nature of any records or information maintained by, available to"

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello Mr. Willett,

I am just trying to understand the dismissal of Ethics Complaint No. 23-567

Since supposedly two complaints were combined, an Ethic Complaint and a Sunshine Complaint, there is only mention of ethics.

Here I am just trying to understand the bar as to where the Ethics Commission takes on SF Sunshine Ordinance complaints

SOTF motion

## Exhibit H page 2

On December 7, 2022, SOTF passed an action on agenda item 6 (A) and (B): "Moved by Chair Yankee, seconded by Member Wolfe to not hear the complaints filed against the SOTF and /or its committees due to a conflict of interests and instructed the SOTF Administrator to refer the complainants to **Administrative Code 67.35 (d)** for information on how they may institute proceedings for enforcement with other entities and to further inform the complainants that they may submit their complaint for an informal discussion and potential action for corrections and that could be made but that no formal order of determination will be issued by the Sunshine Task Force".

**67.35 (d)** specifically says "Ethics Commission"

**AC § 67.35** Enforcement Provisions. **(d)** "Any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a City or State official 40 days after a complaint is filed."

So to me SOTF passed a motion tell me to institute proceedings in a court or before the Ethics Commission on the Sunshine Ordinance violations, but I take it this SOTF motion has no meaning for the Ethics Commission?

Is there any circumstances to which **AC § 67.35 (d)** has meaning for Ethics Commission actual consideration? I do want to point out it says "after a complaint is filed" not determined.

On Ethics Complaint Dismissal Notice:

It says "credible evidence refutes the allegation."

So I am making a **public record request** knowing the Ethics Commission will not provide me this evidence themselves but can provide the following:

**AC § 67.21 (c)** *A custodian of a public record* shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, **whether or not the contents of those records are exempt from disclosure** and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b).

**I am requesting a statement provided in writing to the existence, quantity, form and nature of records or information relating to the "credible evidence refutes the allegation" stated in Ethics Complaint No. 23-567 Dismissal Notice with enough specificity to enable a requester to identify records.**

**If any of the records can be made public but are held by another office or staff person, please direct me to that office(s) or staff person(s).**

If any of the above is not clear please assist me in making a more effective request **CPRA § 6253.1 (a)**.

Thank you for your help in this matter,  
sullivan

# Exhibit I page 1

**From:** Goldberg, Jonathan (DPW)  
**Sent:** Sep 25, 2020 00:54:05.219843900 UTC  
**Subject:** RE: Street Parks /Green Benefit  
**To:** Sophie Constantinou <sophie@citizenfilm.org>

Hi Sophie –

It was great to digitally see you too! I recall Julia Brashares' giving me the visual intro (at a distance, "That's Sophie Constantinou!") at her last Clean Team event in January 2019 – the kick-off was held at Mission High School. She was so humbled and thankful for your support and kind words.

The Street Parks Program is still kicking, but there are long-standing issues that need to be resolved to ensure the program's longevity and future success. One major challenge has been staff turnover at Public Works and SF Parks Alliance; another has been around managing roles, responsibilities, and relationships in this public agency / non-profit / engaged neighbor partnership model.

Public Works' grant agreement with Mission Neighborhood Centers for the Clean & Green Crew expired on January 31, 2020 (right around the news announcement involving the former Director of Public Works). I do not believe this grant is likely to return anytime in the near future.

Community Programs is still supporting small-scale clean-up events and activities in the age of COVID. While we cannot staff clean-up events, we are currently letting residents pick-up tools at the Yard and will support periodic requests for a packer truck.

Forming a Green Benefit District requires significant time and effort. A GBD is a type of special benefit assessment district, where property owners vote to fund services or improvements above and beyond what the City provides. Funding collected through annual property tax bills is remitted back to the District, where neighbors (not City departments) determine what additional services or improvements are funded on an annual basis. The formation process requires a specific level of support in a locally driven Petition of property owners within the GBD boundaries. If sufficient support is secured, then the Board of Supervisors can initiate legislation allowing for a Ballot vote (managed by the Department of Elections), also of property owners within the District. It can be a challenging process to secure passage and approval.

Regards,  
Jonathan

**Jonathan Goldberg**  
Program Manager

Operations | San Francisco Public Works | City and County of San Francisco  
2323 Cesar Chavez Street | San Francisco, CA 94124 | (o) 415.695.2015 | (c) 415.304.0749  
[sfpublicworks.org](http://sfpublicworks.org) · [twitter.com/sfpublicworks](https://twitter.com/sfpublicworks)

**From:** Sophie Constantinou <sophie@citizenfilm.org>  
**Sent:** Wednesday, September 23, 2020 3:56 PM

## Exhibit I page 2

**To:** Goldberg, Jonathan (DPW) <jonathan.goldberg@sfdpw.org>

**Subject:** Street Parks /Green Benefit

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hi Jonathan

Nice to see you today and thanks so much for helping us shephard improvements into the Bernal Cut.

I have been meaning to reach out and ask you about the current state of Street Parks Program and the various opportunities connected to it. Mostly I was wondering what the future of the Clean & Green Team is and how we can keep fueling our community clean up actions. We have a great team that meets on Saturdays and does fierce work on the pathways and hillsides. It would be great to see how we can coordinate a packer truck or tools for those more hefty work days.

The other question I had for you was about the Green Benefit District. The neighbors have often implored that if only we were a park we could get more support for the large swaths of unkempt landscaping around here. If we could follow the steps outlined on your website could we create a Green Benefit District in this neighborhood?

Cheers

Sophie



Sophie Constantinou  
Director

1426 Fillmore Street  
#201  
San Francisco, CA  
94115  
Mobile: 415-378-6085

# Exhibit J page 1

**Subject:** SOTF Response - Immediate Disclosure Request Received 10/7/2024

**From:** "SOTF (BOS)" <sotf@sfgov.org>

**Date:** 10/8/2024, 2:05 PM

**To:** sfneighborhoods.net <info@sfneighborhoods.net>, "SOTF (BOS)" <sotf@sfgov.org>

**CC:** "Somera, Alisa (BOS)" <alisa.somera@sfgov.org>

Hello, Mr. Sullivan --

We have received your 10/7/2024 Immediate Disclosure Request for information regarding the SOTF Complaint Procedures that are posted online.

The version currently posted online inadvertently omitted Sections B(5)(a) and (b). That omission is being addressed and a correct version will be posted shortly. For reference, the missing sections are provided:

5. Complaints naming a single member of the SOTF, a committee of the SOTF, or the full SOTF shall be handled in the following manner:

a. For complaints naming a single member of the SOTF, that member will be instructed to present their case before the SOTF as a respondent; additionally, that member must recuse themselves from participating in the discussion for that complaint and from voting on it as a member of the SOTF.

b. The SOTF will not conduct formal hearings on complaints naming a committee of the SOTF or the full SOTF due to a conflict of interest. For those complaints, the SOTF Administrator shall refer the complainants to Administrative Code 67.35 for information on how they may institute proceedings for enforcement by other entities, and to further inform the complainants that they may submit their complaints to the SOTF Administrator for an informal discussion which may lead to correction; however, no formal Order of Determination will be issued by the SOTF in such an instance.

Regarding your additional questions:

- *Was Section B(5) ever in the official SOTF Complaint Procedures? If so, when was it removed?* **Section B(5) was inadvertently omitted and is being corrected. It has been a part of the SOTF Complaint Procedures, and the Task Force has handled matters subject to this section in the manner as described.**
- *Was Section B(5) et seq. in effect on December 7, 2022?* **Yes, this section was inadvertently omitted in the posted Complaint Procedures, but the SOTF has abided by the direction provided in this section. The motion made by the Task Force on December 7, 2022, is consistent with Section B(5)(b) and the verbiage in the Minutes was taken straight from the Complaint Procedures.**
- *What is the current policy regarding complaints naming a single member, a SOTF committee, or the full SOTF and where can it be found?* **Please see the reference above for the procedures around complaints naming a single member, a SOTF committee, or the full SOTF under Section B(5)(b) (highlighted).**
- *Are there public records that have not been made an attachment to a SOTF agenda?* **All public records received timely and relevant to an open Complaint are made a part of the official file. Public records received after the posting deadlines may be made a part of the file, but not included as part of the agenda/packet materials because they were not received by the posting deadlines.**

## Exhibit J page 2

- Are there records that are not public because they are exempt from disclosure under state, federal and local laws (e.g., SOTF attorney/client communications)? Records that are “attorney/client privilege” are not made public in accordance with federal, state, and local laws. There may also be instances where information is redacted from the agenda/packet materials in accordance with federal, state, and local laws (e.g., personal or medical information).

This concludes our response to this Immediate Disclosure Request.

Thank you.

*Patricia Petersen* (she/her)

Assistant Clerk

Board of Supervisors

1 Dr. Carlton B. Goodlett Place, Room 244

Telephone 415-554-7719 | Fax 415-554-5163

[sotf@sfgov.org](mailto:sotf@sfgov.org) | [www.sfbos.org](http://www.sfbos.org)



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The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

**Disclosures:** Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.

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**From:** sfneighborhoods.net <info@sfneighborhoods.net>

**Sent:** Monday, October 7, 2024 10:41 AM

**To:** SOTF (BOS) <sotf@sfgov.org>; Leger, Cheryl (BOS) <cheryl.leger@sfgov.org>; Petersen, Patricia (BOS) <patricia.petersen@sfgov.org>

**Subject:** Immediate Disclosure Request

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Immediate Disclosure Request

Hello Ms. Leger and Ms. Petersen,

This is a request for information on the SOTF Complaint Procedures. [https://www.sfgov.org/sunshine/sites/default/files/Complaint\\_Procedure.pdf](https://www.sfgov.org/sunshine/sites/default/files/Complaint_Procedure.pdf)

## Exhibit J page 3

This is the current correct SOTF Complaint Procedures?

On 9/20/2023, I download a SOTF Compliant Procedure that included:

“5. Complaints naming a single member of the SOTF, a committee of the SOTF, or the full SOTF shall be handled in the following manner:

a. For complaints naming a single member of the SOTF, that member will be instructed to present their case before the SOTF as a respondent; additionally, that member must recuse themselves from participating in the discussion for that complaint and from voting on it as a member of the SOTF.

b. The SOTF will not conduct formal hearings on complaints naming a committee of the SOTF or the full SOTF due to a conflict of interest. For those complaints, the SOTF Administrator shall refer the complainants to Administrative Code 67.35 for information on how they may institute proceedings for enforcement by other entities, and to further inform the complainants that they may submit their complaints to the SOTF Administrator for an informal discussion, which may lead to correction; however, no formal Order of Determination will be issued by the SOTF in such an instance.”

that no longer is in the SOTF Complaint Procedures.

Was SOTF Compliant Procedure 5. on "Complaints naming a single member of the SOTF, a committee of the SOTF, or the full SOTF

shall be handled in the following manner" ever in the official SOTF Complaint Procedures? If so, when was it removed?

What is outlined in SOTF Compliant Procedure 5. on "Complaints naming a single member of the SOTF, a committee of the SOTF, or the full SOTF shall be handled in the following manner" still the current policy of the SOTF as decided at the SOTF December 7, 2022 meeting, agenda item 6?

If the policy is different than SOTF Compliant Procedure 5. on "Complaints naming a single member of the SOTF, a committee of the SOTF, or the full SOTF shall be handled in the following manner" can you give me the current policy or point me in the direction it is located?

Are there records that can be made public that are not in any attachment to a SOTF agenda item on procedures on complaints naming a single member of the SOTF, a committee of the SOTF, or the full SOTF?

Are there records that can not be made public (example SOTF attorney communications) on procedures on complaints naming a single member of the SOTF, a committee of the SOTF, or the full SOTF?

Thank you for your help in this matter,

sullivan



# 24 Copies produced (17 copies produced after explicitly saying no ads)

Exhibit K page 1

**From:** Union Plus

**Sent:** Apr 20, 2021 19:40:42.000000000 UTC

**Subject:** April showers = big springtime savings. Bring a bucket!

**To:** Rossetto, Michael (DPW)

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## Ready, set, spring!

April showers mean spring savings are in full bloom! Take your pick of these exclusive, springtime deals — and don't forget to plan ahead for Mother's Day!



**Mother's Day is May 9<sup>th</sup>!**



Shop now and save



Auto Buying

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## **Shop Union Made & Save!**

Union members save thousands off MSRP, plus get perks like a Buyers Bonus and a \$100 rebate on new union-made cars.\*

Not ready to visit the dealership? Look for the Buy from Home badge for dealers with remote paperwork and vehicle delivery options.

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## Exhibit K page 4

**Shop now**

\*Actual savings may vary. Buyers Bonus benefits not available in NY or NH. See site for rebate details.

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**Car Rental**



# Exhibit L page 1

**From:** Laura Stein <lstein.sotf@gmail.com>

**To:** "libraryusers2004@yahoo.com" <libraryusers2004@yahoo.com>

**Sent:** Friday, March 3, 2023, 01:55:03 PM PST

**Subject:** Re: More to Annual Report, Including: Deadline Extension for Info Requesters?...Re: Thank you and.... Fw: Survey/s and Solicitations for SOTF Annual Report - Immediate Disclosure Request 23-0203CC

On Mar 2, 2023, at 11:34 AM, Library Users Association <libraryusers2004@yahoo.com> wrote:

Dear Member Stein:

Thank you for your response/s February 27.

I had limited time to look at Item 12 of the SOTF March 1, 2023 agenda, and have a few questions/requests.

1. Will there be any extension of the deadline of February 28 for "Case Study" to be provided? This agenda is the first time I have seen the full details of what you ask for and how it will be used ("for website"??) and for possible inclusion in the Annual Report.

I was not planning on extending this deadline for the case studies. As it was, the list of potential data sources was aspirational, i.e. we were not sure we could get all of them done in a timely fashion. I still want to put the case study solicitation online (I have been waiting 2-3 months for it to be approved for posting on the website, which can only be done by the city). Stories that come in late could be considered for future reports, or if they're not too late, added to this report. The goal was to finish this report as close to 2022 as possible, so I would not want to wait much longer. We are only looking for 1-2 paragraphs, very concise, that answers the specific questions given. If it can be done in the next 2 weeks, we could consider it for inclusion. But unfortunately this potential source of information was stymied by our inability to post it online and then publicize it more widely.

2. I note that Page 1449 of the March 1, 2023 agenda packet, references a **\*\*draft\*\*** of the Survey Monkey survey (See Note A below), and of course I would like to see the **\*\*actual\*\*** survey, again as mentioned previously, without having to go to their website or take the survey or dealing with problems that may arise (and have arisen when I have gone to other websites), such as that they may not advance to subsequent pages unless the current one(s) are completed.

I would appreciate if you would provide a copy of the actual survey as it appears to those going to SurveyMonkey. Screen images would be appropriate in case there are such things as instructions; multiple differing paths depending on responses; graphics; text or link to texts of such things as privacy policy, terms of use, etc.; advertisements and/or other solicitations.

Screenshots included below. I cannot send you a survey exactly as it would appear to respondents since survey monkey does not let me send a survey to myself. These screen shots are from my survey dashboard as the administrator.

3. Page 1449 of the March 1, 2023 agenda packet also addresses the request for survey responses to "Dear Custodian of Records or Employee for [Insert dept or Agency]." (NoteA\*) There is, to my knowledge, no single "Custodian of Records" for any agency or department, unless the agency or department has only one employee. The Sunshine Ordinance defines "custodian" as every person who has custody (presumably access): "Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record)...." (see Note

## Exhibit L page 2

B\*\*). The concept of a corporate-style, single source of information for an enterprise or section of an enterprise, as the one person authorized to receive and respond to public information requests is not endorsed by the Sunshine Ordinance, to my knowledge.

What do you mean by "Custodian of Records ... for [dept. or Agency]"? I would ask for a citation from the Sunshine Ordinance or wherever this concept came from, and to, your/SOTF's apparent understanding of the term as a single person representing a department or agency with regard to information requests and responses.

To me it means any custodian of records and preferably one suited to answer the questions in the survey. I have no citation for it. I know some agencies designate 1 person whom they consider the main contact person and "custodian" for answering requests, others don't. I know the Ordinance makes everyone a custodian. I presumed each body could direct the email to the person best equipped to answer records questions for the dept. as a whole, and that the term would signal that I was looking for someone with access to information about the public records requests they had received.

4. I note that Page 1454 has a one-page solicitation of "impact stor[ies]" regarding "how you or your organization have used information from public records requests this past year." (see Note C.\*\*\*) It also includes "(\*required, email or telephone number)" for how best the SOTF could contact the information provider "for more information if necessary."

Why aren't mail or fax or other communications means included as a contact method, and why isn't there provision for anonymous communication to the SOTF? There are people who prefer anonymity and those who prefer such means of communication, including during your own experience as a member of the Task Force. This also appears biased away from interest in problems of any kind, or suggested improvements, in Sunshine operation at any level,

We are not soliciting records requests, but potentially verifiable impact stories for a research report. We need to be able to reach submitters in case descriptions are incomplete and to verify the stories. I am fine with someone mailing them to the SOTF, but chances are conducting the process by mail or fax through the SOTF administrator will not enable it to meet the timeline for production of the report. If you want to submit by these methods, however, you can. Are you suggesting I resubmit the form to the Clerk's Office with these additions? I can do so. It will cause even further delay in getting this posted online, but my sense is that we will not be including any impact stories in the 2022 final report anyway, since the notice has not been published online or publicized in a timely fashion and no stories have been submitted.

I note that you do appear to be interested in problems elsewhere, e.g. yet to come from Bruce Wolfe, pages 1447-8, regarding:

"- Funding denied but desperately needed (Lack of adequate admin support and online database of decisions, interactive files)

1447

"- Loss of legal memos which has greatly affected our process"

Statements of problems are to be written by SOTF members, since that was the agreed upon process and SOTF is ultimately responsible for advising the Board of Supervisors. These are problems raised by cases in 2022 that a member feels should be addressed. If the statements are not endorsed by the SOTF as a whole at the next meeting, that member has the option to include their statement in the appendix or not at all. If you want to submit some problem statements to me, I can post them online for members to review and potentially adopt. I have been asking members of the public to send me their thoughts and feedback about anything to do with the annual report for several months in SOTF meetings. If you want to submit some statements, please make them as concise as possible, ideally no



## Exhibit L page 3

more than 1 paragraph, and submit them immediately. I have to give them to Cheryl for inclusion in the next SOTF meeting agenda, i.e. about 2 weeks from now.

I would certainly say that successful responses to public records requests have generally helped information requesters understand better the functions and functioning of our City government and its agencies -- and that overall this has enabled the broader functioning of public awareness and the functioning of democracy. I would say that public records requests that were blocked, or ignored, or delayed, or inadequately responded to -- were impediments to these purposes and in many cases set or confirmed or broadcast a tone, a pattern, of contention and difficulty in ever getting information, with resulting diminution or elimination of public knowledge and a shrinkage in the effective functioning of democracy. I certainly hope that the Task Force would be interested in including in its solicitation -- and report -- the public's experience of "unsuccessful" responses to public records requests and the experience of the public regarding the operation of Sunshine and the Sunshine Ordinance Task Force. Identifying and understanding problems is key to the ability to work toward improvement.

I am trying to gather data for this first report and put it out in a timely fashion. We took public comment over several meetings on what data should/shouldn't be included in this report. This report has been discussed in SOTF meetings for at least 4-5 months. Since task force members do not have much in the way of resources, we cannot do everything and strategic decisions had to be made. Even among the categories of data collection that were approved, we were not sure that we could complete all of them in a timely or rigorous enough fashion to include in the report. The agreed upon category of data was success stories, not failure stories. However, I do think failure stories could be useful. Perhaps they can be incorporated into future reports, presuming members agree to it.

best, Member Stein

Thank you for your effort and for your attention to this.

Sincerely yours,

Peter Warfield  
Executive Director  
Library Users Association  
libraryusers2004 @ yahoo.com  
P.O. Box 170544, San Francisco, CA. 94117-0544

-----  
\*NOTE A, From top of Page 1449, SOTF Agenda Packet for March 1, 2023 meeting of the full Sunshine Ordinance Task Force:

DRAFT Survey for Departments

Please note: SurveyMonkey allows only 10 questions on its basic account. The proposed survey is below. Also below is my proposed email to send to city depts with a link to the survey.

Email for Custodians DRAFT

Dear Custodian of Records or Employee for [Insert dept or Agency],

-----  
-----  
\*\*NOTE B: Section 67.21 from SOTF website:  
SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.  
(a) Every person having custody of any public record or public information, as defined herein, (hereinafter

## Exhibit L page 4

referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

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\*\*\*Note C:

Page 1454 of SOTF Agenda Packet for March 1, 2023 meeting of the full Sunshine Ordinance Task Force:

Draft Case Study Solicitation for SOTF Website:

Submit your impact story to us by February 28; 2023!

Did you make a public records request in 2022? The Task Force seeks examples of how you or your organization have used information from public records requests this past year. Your response can't be brief. Stories should answer all of the questions below. We will review these stories for possible inclusion in our annual report to the Board of Supervisors.

\*How can we best contact you for more information if necessary? (\*required, email or telephone number)

Who requested the information? (Please state the name of the person or organization requesting the information.)

What information was requested? (Example: Jane Doe's 2022 police incident report)

Who was the information requested from? (Example: The Police Department)

When was the information requested and received? (Give both dates. Example: It was requested on July 4, 2022 and received on July 10, 2022)

What did you learn from the information and how did you use it? (Brief comment)

How did the information you received help you, your community, or other citizens? (Please specify any demonstrable effects that you observed. Your response should be no longer than 500 words).

Thank you for sharing your impact story!

-----

On Monday, February 27, 2023, 08:59:32 AM PST, <drlaurastein@gmail.com> wrote:

Peter,

I sent you everything I had in terms of solicitations to other members. I made several verbal solicitations during public meetings of the SOTF. There was no formal written solicitation to complainants or members. I have no further written exchanges with anyone and no one has submitted anything to me.

The links I sent you are to material, all of which is in this week's packet if you click on item 12. It includes the survey, introductory letter to agencies, and more. If you want a hard copy at a city office, Cheryl Leger at SOTF should be able to provide that. These are the same links I sent you but in pdf form.

I sent you 1 copy of the email I sent out to 1 agency since I thought you were interested in the text of the email, rather than every email to every agency which are identical except for the email address and the name of the agency in the first line. To follow will be every email solicitation sent to every agency.

I believe that fully answers your request.

Sent from my iPhone

On Feb 26, 2023, at 9:46 PM, Library Users Association <libraryusers2004@yahoo.com> wrote:



## Exhibit L page 5

Dear SOTF Member Stein:

Thank you for sending this and several additional emails regarding your work on the Annual Report.

I have unfortunately not been able to respond more quickly, but am still very interested in this important and potentially very valuable project.

I still do not see what I thought I requested, namely the actual solicitations that you sent or had sent to City agencies/departments/commissions/etc. -- and exactly to whom, i.e. email addresses and hopefully explanations of what agency each represents. Also, I saw something to/from Anonymoose, but I'm not sure that communications with any other user of Task Force services, including complainants, were provided, and I did understand you to say that there were two or perhaps more of regulars.

I got a lot of links, and have not wanted to go there for a number of reasons including privacy -- including having to turn information over to third parties who are in the business of processing it for profit, aka the surveillance economy. Bruce Wolfe also mentions in one of your emails security issues, and I can say that attempting to go to third party links from another information provider than yourself has also resulted in apparently crashing the computer I was working on.

So I would like to be able to see the material directly -- preferably in printed format, preferably at the office of the Clerk of the Board as what I've requested is presumably public documents that are part of your work; alternatively printouts or text versions of the documents, such as PDFs or Word documents or inline text forwarded by email. So for example I would like to see the Survey that Survey Monkey is helping you to administer -- without going to that party's website.

Thank you for your efforts on this.

Sincerely yours,

Peter Warfield  
Executive Director  
Library Users Association  
libraryusers2004 @ yahoo.com  
P.O. Box 170544, San Francisco, CA. 94117-0544

----- Forwarded Message -----

**From:** Laura Stein <drlaurastein@gmail.com>

**To:** "libraryusers2004@yahoo.com" <libraryusers2004@yahoo.com>

**Sent:** Friday, February 3, 2023, 06:15:24 PM PST

**Subject:** Re: Survey/s and Solicitations for SOTF Annual Report - Immediate Disclosure Request 23-0203CC

I have now sent you all the materials. Please publicize the call for impact stories if you can.

-Member Stein

> On Feb 3, 2023, at 5:35 PM, Library Users Association <[libraryusers2004@yahoo.com](mailto:libraryusers2004@yahoo.com)> wrote:

>

> Survey/s and Solicitations for SOTF Annual Report - Immediate Disclosure Request 23-0203CC

>

>

> Dear SOTF Member Stein:

>

> At Wednesday's SOTF meeting, February 1, 2023, I understood you to say you had sent out a survey to some 12-14 City agencies, in connection with your efforts to prepare an SOTF Annual Report. I also

## Exhibit L page 6

understood you to say that you had contacted two or so individuals (not City agencies) who are regular or frequent SOTF attendees or users.

>

> I believe I requested, during my comments at the meeting, to receive a copy of the survey, and am disappointed not to have heard from you to date, two full business days after the meeting. Perhaps there was something unclear or a difficulty about the matter, and if so I would appreciate knowing about it.

>

> In the meantime, I would like to request to inspect the survey you referenced, and any variations if there were any. I'd also like to see what was actually sent to the City agencies, including such things as whatever transmittal you may have sent to each City agency, such as a cover letter.

>

> In addition, I would like to inspect the communication to others from whom you mentioned requesting stories or testimony or anything else, in connection with your gathering information for the annual report.

>

> Just so you know, I have phrased this as an Immediate Disclosure Request so that I may have a reply by the end of the next business day after you receive this, even if it is only to say there may be a delay beyond that day in providing the material. I just don't know at this point whether you heard my request, or were even in attendance at the time of my request, as my ability to \*\*see\*\* who is present, or paying attention, or anything else, is zero, given my participation in the meeting via telephone. If we count business days and receipt Monday, I would hope for a reply by Tuesday evening.

>

> Thank you for your efforts in general and for your attention to this.

>

> Sincerely yours,

>

>

> Peter Warfield

> Executive Director

> Library Users Association

> libraryusers2004 @ yahoo.com

> P.O. Box 170544, San Francisco, CA. 94117-0544

Screenshot 2023-03-02 at 11.47.02 AM.png

The screenshot displays the 'Sunshine Survey' design tool interface. At the top, there are navigation tabs: SUMMARY, DESIGN SURVEY (active), PREVIEW & SCORE, COLLECT RESPONSES, ANALYZE RESULTS, and PRESENT RESULTS. On the right side of the header, there are buttons for 'UPDATE', a circular icon, and 'Add collaborators'. Below the header, a left sidebar contains icons for 'Build', 'Style', 'Logic', 'Options', 'Question Bank' (highlighted in green), and 'Format'. The 'Question Bank' sidebar lists categories: Recommended Questions, Previously Used Questions, All Categories, Community, Customer Feedback, Customer Satisfaction, Demographics, Education, and Functions. The main workspace shows a preview of question 8: '8. In 2022, what was the average number of days it took your department/agency to respond to a public records request?'. Below the question text is an empty text input field. Further down, question 9 is partially visible: '9. In 2022, how many public records or public meetings requests or complaints received by your department or agency resulted in litigation?'. At the bottom, question 10 is partially visible: '10. Please describe the existence, quantity, form and nature of any records your department or agency maintains on its public records requests. Please specify the types of data you track.'.

Screenshot 2023-03-02 at 11.46.45 AM.png

# Exhibit L page 7

Sunshine Survey

UPGRADE Add collaborators

SUMMARY → DESIGN SURVEY → PREVIEW & SCORE → COLLECT RESPONSES → ANALYZE RESULTS → PRESENT RESULTS

QUESTION BANK

Search for questions

Recommended Questions

Previously Used Questions

All Categories

Community

Customer Feedback

Customer Satisfaction

Demographics

Education

Events

Healthcare

Human Resources

Industry Specific

3. In 2022, how many public records requests did your agency or department receive? 0

4. In 2022, how many public records requests were submitted to your department or agency on NextRequest or GovQA? 0

5. In 2022, for how many public records requests were you able to provide the requested information? 0

6. In 2022, for how many public records requests did you refer the requestor to another agency or department for the information sought? 0

7. In 2022, for how many public records requests did you redact information in your response? 0

8. In 2022, what was the average number of days it took your department/agency to respond?

Screenshot 2023-03-02 at 11.46.28 AM.png

Sunshine Survey

UPGRADE Add collaborators

SUMMARY → DESIGN SURVEY → PREVIEW & SCORE → COLLECT RESPONSES → ANALYZE RESULTS → PRESENT RESULTS

QUESTION BANK

Search for questions

Recommended Questions

Previously Used Questions

All Categories

Community

Customer Feedback

Customer Satisfaction

Demographics

Education

Events

Healthcare

Human Resources

Industry Specific

**Sunshine Survey**

**Introduction and Welcome**

The Sunshine Ordinance Task Force (SOTF) requests that you provide information on the public records requests received and processed by your department, commission, committee, advisory board, agency or body during the 2022 calendar year. Please answer the following questions to the best of your ability. If your agency does not collect information that would enable you to answer a question, you may leave that question blank. The data you provide is public and subject to the terms & conditions stated on the Survey Monkey platform. The Task Force will use your answers to create an overview of San Francisco Sunshine activity in 2022. If you have any questions, please email SOTF Member Laura Stein at lstein.sotf@gmail.com. Thank you for taking the survey, and remember to send us a printout of your Next Request or GovQA dashboard showing your 2022 statistics and a sample of any Sunshine spreadsheets you kept for 2022.

\* 1. Please indicate your name, work phone number, and work email address. 0

\* 2. For which agency or department are you answering this survey? 0

3. In 2022, how many public records requests did your agency or department receive? 0

# Exhibit 7 Exhibit M page 1

**Subject:** Public Record Request

**From:** "sfneighborhoods.net" <info@sfneighborhoods.net>

**Date:** 8/1/2022, 8:50 AM

**To:** "Young, Victor (BOS)" <victor.young@sfgov.org>

Public Record Request

Mr. Young,

I make this record request of you because you seem to be only tangential to the issue of SOTF process or lack of process to notify local media of special meetings with your e-mail address only appearing cc in the last e-mail of records so far made public so far. Also, Ms. Leger being out of the office for a part of the time for this public record request time limit.

1. Please provide copies of all communications of any kind, including email, text, chat, etc. that have not been made public yet, about the subject of Mr. Sullivan, [info@sfneighborhoods.net](mailto:info@sfneighborhoods.net), reiteration of request to be notified of SOTF special meetings on January 26, 2022. Communications involving Leger, Cheryl (BOS) <[cheryl.leger@sfgov.org](mailto:cheryl.leger@sfgov.org)>; Bruce Wolfe (Chair, SOTF, SF) <sotf@brucewolfe.net>; Matt Yankee [yankeema@gmail.com](mailto:yankeema@gmail.com) and possibly more individuals on the subject.

Records currently public on this issue are found at [https://sfgov.org/sunshine/sites/default/files/sotf\\_080322\\_item3A.pdf](https://sfgov.org/sunshine/sites/default/files/sotf_080322_item3A.pdf)

Exhibit 2 (pages 67-68) and Exhibit 3 (pages 69 – 70).

2. Please provide copies of all communications of any kind, including email, text, chat, etc. about

Subject: Immediate Disclosure Request - Public Record Request

From: "sfneighborhoods.net" <[info@sfneighborhoods.net](mailto:info@sfneighborhoods.net)>

Date: 1/28/2022, 10:06 AM

To: "SOTF, (BOS)" <[sotf@sfgov.org](mailto:sotf@sfgov.org)>

There was no response to this first request.

[https://sfgov.org/sunshine/sites/default/files/sotf\\_080322\\_item3A.pdf](https://sfgov.org/sunshine/sites/default/files/sotf_080322_item3A.pdf)

Exhibit 4 (page 71)

3. Please provide copies of all communications of any kind, including email, text, chat, etc. about Mr. Sullivan's second attempt that have not been made public

Subject: Immediate Disclosure Request - Public Record Request

From: "sfneighborhoods.net" <[info@sfneighborhoods.net](mailto:info@sfneighborhoods.net)>

Date: 2/7/2022, 3:11 PM

## Exhibit 7

Exhibit M page 2

**Subject:** Public Record Request

**From:** "sfneighborhoods.net" <info@sfneighborhoods.net>

**Date:** 8/1/2022, 8:50 AM

**To:** "Young, Victor (BOS)" <victor.young@sfgov.org>

Public Record Request

Mr. Young,

I make this record request of you because you seem to be only tangential to the issue of SOTF process or lack of process to notify local media of special meetings with your e-mail address only appearing cc in the last e-mail of records so far made public so far. Also, Ms. Leger being out of the office for a part of the time for this public record request time limit.

1. Please provide copies of all communications of any kind, including email, text, chat, etc. that have not been made public yet, about the subject of Mr. Sullivan, [info@sfneighborhoods.net](mailto:info@sfneighborhoods.net), reiteration of request to be notified of SOTF special meetings on January 26, 2022. Communications involving Leger, Cheryl (BOS) <[cheryl.leger@sfgov.org](mailto:cheryl.leger@sfgov.org)>; Bruce Wolfe (Chair, SOTF, SF) <[sotf@brucewolfe.net](mailto:sotf@brucewolfe.net)>; Matt Yankee <[matt.yankee@gmail.com](mailto:matt.yankee@gmail.com)> and possibly more individuals on the subject.

Records currently public on this issue are found at <https://www.sfdph.org/dph/eha/airquality/Pages/2022-08-01-Exhibit-1-Records.aspx>

Exhibit 2 (pages 67-68) and Exhibit 3 (pages 69 – 70).

2. Please provide copies of all communications of any kind, including email, text, chat, etc. about

**Subject:** Immediate Disclosure Request - Public Record Request

**From:** "sfneighborhoods.net" <[info@sfneighborhoods.net](mailto:info@sfneighborhoods.net)>

**Date:** 1/28/2022, 10:06 AM

**To:** "SOTF, (BOS)" <[sotf@sfgov.org](mailto:sotf@sfgov.org)>

There was no response to this first request.

<https://www.sfdph.org/dph/eha/airquality/Pages/2022-08-01-Exhibit-1-Records.aspx>

Exhibit 4 (page 71)

3. Please provide copies of all communications of any kind, including email, text, chat, etc. about Mr. Sullivan's second attempt that have not been made public

**Subject:** Immediate Disclosure Request - Public Record Request


**From:** "sfneighborhoods.net" <[info@sfneighborhoods.net](mailto:info@sfneighborhoods.net)>

**Date:** 2/7/2022, 3:11 PM

**Subject:** RE: Notification of Special Meetings  
**From:** "SOTF, (BOS)" <sotf@sfgov.org>  
**Date:** 1/26/2022, 12:31 PM  
**To:** sfneighborhoods.net <info@sfneighborhoods.net>

Mr. Sullivan: The entire retreat was recorded and concluded at 10:00 PM yesterday. An Agenda was published and the meeting was open to the public. There are several items from yesterday's agenda that were not discussed and will be carried over to the next retreat. That retreat will take place in February, but at what date I do not know. You are welcome to listen in a provide public comment when that happens.

Cheryl Leger  
 Assistant Clerk, Board of Supervisors  
[Cheryl.Leger@sfgov.org](mailto:Cheryl.Leger@sfgov.org)  
 Tel: 415-554-7724  
 Fax: 415-554-5163  
[www.sfbos.org](http://www.sfbos.org)

 Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form.

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

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---

**From:** sfneighborhoods.net <info@sfneighborhoods.net>  
**Sent:** Wednesday, January 26, 2022 10:59 AM  
**To:** Leger, Cheryl (BOS) <cheryl.leger@sfgov.org>  
**Subject:** Re: Notification of Special Meetings

Ms. Leger,

SOTF Retreat does not sound to me like SOTF Retreat meeting open to the public. I just thought you were going on a retreat not open to the public and I am sure parts were not open to the public.

Also 67.6 (f), (e) and CPRA 54956 all say to some degree "by **delivering personally or by mail written notice** to each member of such policy body **and the local media who have requested written notice of special meetings in writing.**" and "The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice." which seems to me that an e-mail would suffice. I would just have a list of special meeting notice e-mail addresses.

I am not upset or anything, just constantly swimming upstream with SOTF (like on the combining compliant or issues) and custodian of records violations. We just work our way through it all.

It would be great to get notice when special meetings are decided but 24 hours is all that is required by law. You can also just send me the special meeting agenda when made since it will contain all the information required by law.

I was happy to participate. I will be coming out with something soon that will help SOTF meetings go faster and should also help you.

best,  
 m sullivan

On 1/26/2022 10:40 AM, Leger, Cheryl (BOS) wrote:

Mr. Sullivan: I was pleased that you were able to participate in last night's SOTF Retreat. I do not know when the second part of that meeting will take place, but probably in the near future. I will do my best to keep you posted of special meetings, however the SOTF announced a possible retreat back in December, so you were notified.

Cheryl Leger  
 Assistant Clerk, Board of Supervisors  
[Cheryl.Leger@sfgov.org](mailto:Cheryl.Leger@sfgov.org)  
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 Date: 1/26/2022, 12:31 PM  
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