



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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JAMIE S. STUDLEY  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: June 17, 2013

To: Members, Ethics Commission

From: John St. Croix, Executive Director

Re: **Show Cause Hearing – Ethics Complaint 02-130307**

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On March 7, 2013, the Sunshine Ordinance Task Force ("Task Force") delivered a referral letter and an Order of Determination ("Order") to the Ethics Commission. The referral was made pursuant to Sunshine Ordinance section 67.34 and 67.30(c). The named respondent was Kate Patterson of the Arts Commission. The named complainant was Peter Warfield of the Library Users Association. The referral stated that Respondent violated Sunshine Ordinance section 67.25(a) for failing to respond to an immediate disclosure request in a timely manner, section 67.26 for failing to keep withholding to a minimum, and section 67.34 for the willful failure to comply with the Order of Determination issued April 5, 2012. The matter was Sunshine complaint number 12001.

Pursuant to the Ethics Commission Regulations for Violations of the Sunshine Ordinance ("Regulations"), staff originally scheduled this matter to be heard at a Show Cause Hearing during the next Ethics Commission meeting of April 22, 2013. The matter was postponed to be heard at this meeting. Both Parties were notified of the original hearing date and of the postponed date.

According to the Order, the Task Force held a hearing on the matter on March 7, 2012 (presumably the Task Force meant 2012). Peter Warfield alleged that on December 15, 2011, the Library Users Association requested electronic copies of speaker cards submitted by members of the public at Arts Commission meetings from September through November 2009 and September through December 2011 and at Visual Arts Committee meetings from September through November 2009 and in August 2011. The Library Users Association also requested to inspect the original speaker cards at SFAC's office. On December 19, 2011, the SFAC secretary produced electronic copies of the existing speaker cards responsive to the request and offered dates for Mr. Warfield to pick up copies of the cards and listen to audio tapes at the SFAC office. When Mr. Warfield inspected the speaker cards on December 20, 2011, he learned that the SFAC had redacted contact information from the cards produced to him the previous day. Mr. Warfield alleged the SFAC had not previously notified the

Library Users Association that information had been redacted or provided justification for the redactions.

The Task Force concluded that the members of the public who submitted the speaker cards did not have a reasonable expectation of privacy that information submitted during a public meeting would be kept confidential. Although providing the information is not required to speak at a public meeting, the information was willingly provided to the SFAC, a public body, during a public meeting with the intention of speaking during public comment. The Task Force further concluded that the speaker cards are public records pursuant to local and state public records laws, and the section of the California Constitution cited by the SFAC as justification for the redactions is not an exemption to disclosure of public records under either the Sunshine Ordinance or the California Public Records Act ("CPRA"). The Task Force additionally concluded that the speaker card information is not exempted under the personnel and medical records exemption in Section 6254(c) of the CPRA because the speaker cards are created in a public setting without the same expectation of privacy as circumstances under which personnel, medical, and similar records are created.

Although the Task Force included a finding that Ms. Patterson violated Sunshine Ordinance 67.27 in the Order dated April 5, 2012, it did not refer that violation to the Ethics Commission in the referral dated March 7, 2013. In addition, the Task Force referred this matter as a willful violation under section 67.34. However, Ms. Patterson is not an elected official or department head. Thus, this matter will be handled under Chapter Two of the Ethics Commission Regulations for Violations of the Sunshine Ordinance ("Regulations")

Under Chapter Two of the Regulations, there is a presumption that the Task Force findings are correct, and the Respondent bears the burden to show that the Task Force erred in its determination. (*See* Regulations, Chapter Two, § II.B.) The votes of at least three Commissioners are required to make a finding that a Respondent has met his or her burden and has not committed a violation of the Sunshine Ordinance based on a preponderance of the evidence. (*See* Regulations, Chapter Two, § II.D.)

Neither the Respondent nor the Complainant are required to attend. However, if any party fails to appear, and the Commission did not grant the party a continuance or reschedule the matter under Chapter Four, section I.E, then the Commission may make a decision in the party's absence.

Each Respondent and the Complainant may speak on his or her own behalf, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing.

Copies of all of the documents received from the Task Force regarding this matter have been attached to this memorandum.



# SAN FRANCISCO ARTS COMMISSION

FILED

2013 APR -1 PM 3:40

SAN FRANCISCO  
ARTS COMMISSION

EDWIN M. LEE  
MAYOR

May 29, 2012

TOM DECAIGNY  
DIRECTOR OF  
CULTURAL AFFAIRS

RE: WRITTEN ORDER OF DETERMINATION OF <sup>BY</sup> APRIL 5, 2012 - LIBRARY USERS  
ASSOCIATION v. SAN FRANCISCO ARTS COMMISSION (CASE NO.12001)

Dear Honorable Members of the Sunshine Ordinance Task Force:

I am writing in response to the Written Order of Determination of April 5, 2012 in which the Sunshine Ordinance Task Force (SOTF) found the:

*SFAC in violation of Sunshine Ordinance Sections 67.25(a) for failure to respond to the immediate disclosure request in a timely manner, 67.26 for failure to keep withholding to a minimum by improperly redacting the information from the speaker cards, and 67.27 for failure to justify withholding the redacted information... The SFAC shall release the speaker cards requested without redactions within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on April 17, 2012 at 4:00 p.m. in Room 408 of City Hall. The Committee shall monitor compliance with this Order.*

While we acknowledged that our response to this Written Order of Determination was delayed, we are writing to reiterate our position that we acted appropriately by redacting the personal information of those individuals who filled out speaker cards at past commission meetings.

At the May 15, 2012 SOTF committee meeting, Ms. Patterson, acting as a representative for the San Francisco Arts Commission (SFAC), apologized to Mr. Warfield and the committee members for the agency's oversight in providing a written response to this order within the required timeframe and failing to attend the Compliance and Amendments Committee meeting on April 17, 2012.

Herein lies the SFAC's official response to the Written Order of Determination of April 5, 2012 regarding the redaction of personal information from meeting speaker cards requested by Mr. Warfield on January 13, 2012.

In the SFAC's December 19, 2011 email response to Mr. Warfield's request for:

1. Filled-out speaker cards for the (a) Arts Commission meetings, and (b) Visual Arts Committee meetings of September, October, and November of 2009 (two years ago).
2. Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received thank you) and Visual Arts Committee meetings of August 17, 2011 through the present.

The SFAC explained that there were no speaker cards responsive to his request number 1, and we supplied pdf copies of speaker cards for the following meetings in response to his requests number 2:



CITY AND COUNTY OF  
SAN FRANCISCO

Full Commission September 12, 2011  
Full Commission November 16, 2011  
Visual Arts Committee August 17, 2011  
Visual Arts Committee October 19, 2011

We further explained that there were no cards for any of the other meetings he had requested, and that to protect the individuals' right to privacy under the California Constitution, Article 1, Section 1, we redacted the personal addresses (but not business addresses) that had been written on the above cards before making pdf files and photocopies. We also provided Mr. Warfield with paper copies of the same documents.

At the SOTF meeting on March 7, 2012, Ms. Patterson testified that under the advice of the agency's City Attorney the SFAC acted appropriately in redacting the personal information of the individuals who filled out the speaker cards citing the individuals' right to privacy under the California Constitution, Article 1, Section 1.

The SOTF found the SFAC in violation as follows:

*The Task Force concluded that the members of the public who submitted the speaker cards did not have a reasonable expectation of privacy that information submitted during a public meeting would be kept confidential. Although providing the information is not required to speak at a public meeting, the information was willingly provided to the SFAC, a public body, during a public meeting with the intention of speaking during public comment.*

*The Task Force further concluded that the speaker cards are public records pursuant to local and state public records laws, and the section of the California Constitution cited by the SFAC as justification for the redactions is not an exemption to disclosure of public records under either the Sunshine Ordinance or the California Public Records Act ("CPRA"). The Task Force additionally concluded that the speaker card information is not exempted under the personnel and medical records exemption in Section 6254(c) of the CPRA because the speaker cards are created in a public setting without same expectation of privacy as circumstances under which personnel, medical, and similar records are created.*

Today, despite the SOTF finding, the SFAC maintains that it acted appropriately by redacting the personal information of those who filled out speaker cards at past commission meetings, because at the time it was unclear to both the SFAC and the individuals in question that they would be waiving their Constitutional rights of privacy by participating in the Commission meeting by filling out residence information on a card.

At no point did the SFAC's speaker cards include information alerting the individual to the fact that once handed to the commission that his/her private information would be of public record. The SFAC has since modified its speaker cards so that it does not ask for one's personal address and it now includes a disclaimer that reads as follows: "You are not required to complete this card in order to make a public comment, and you may speak anonymously, if you wish."

Consistent with the federal and state constitutional provisions protecting the right of individuals to privacy, and consistent with the Sunshine Ordinance and Public Records Act, the Arts Commission properly withheld the private home address information of citizens who submitted public comment at the Arts Commission's meetings.

The "Findings and Purpose" section of the Sunshine Ordinance makes clear that the Sunshine Ordinance was not intended to eliminate or interfere with privacy rights. Specifically, Section 67.1(g) states that "[p]rivate entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected." S.F. Admin. Code 67.1(g). The Public Records Act, likewise, was adopted by the Legislature in the spirit of being "mindful of the right of individuals to privacy." Cal. Gov't Code Sec. 6250.

Section 6254(k) of the California Public Records Act permits an agency to decline to disclose "[r]ecords the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Cal. Gov't Code Sec. 6254(k). Article I, Section 1 of the California Constitution, in turn, protects a citizen's right to privacy and classifies such a right as an "inalienable" right. That provision states that "[a]ll people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and **privacy**." (emphasis added). Cal. Const., Art. I, Sec. 1. In addition, the Public Records Act allows an agency to decline to disclose "[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." Cal. Gov't Code Sec. 6254(c). Thus, the Arts Commission, as a City agency, may not make disclosures that violate a citizen's right to privacy.

Courts have held one's residence and phone number to be private. In *United States Department of Defense v. Federal Labor Relations Authority*, 510 U.S. 487, 494-501 (1994) ("*Dep't of Defense*"), the United States Supreme Court held that the home addresses of federal employees are exempt from disclosure to unions under the privacy exemption in the Freedom of Information Act (FOIA). The California Public Records Act is modeled on the FOIA and the judicial construction and legislative history of the federal act guide the interpretation of the California Act. *A.C.L.U. v. Deukmejian* 32 Cal.3d 440, 447 (1982). The FOIA, like the Public Records Act, exempts from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). The Court found that employees have some "non-trivial privacy interest in nondisclosure" of their home address information and "in avoiding the influx of [unsolicited] union-related mail ... telephone calls or visits, that would follow disclosure." *Dep't of Defense*, 510 U.S. 487, 488. Accordingly, the Court was "reluctant to disparage the privacy of the home, which is accorded special consideration in our Constitution, laws, and traditions." *Id.* at 501. The Court found that the individual privacy interest in nondisclosure of home address information was "far from insignificant" especially "when we consider that other parties, such as commercial advertisers and solicitors, must have the same access" to such information under FOIA. *Id.*

Similarly, in *Sheet Metal Workers v. Dep't of Veteran Affairs*, the court found that workers hired to help renovate a veterans hospital had a significant privacy interest in the nondisclosure of their names and addresses. *Sheet Metal Workers v. Dep't of Veteran Affairs* 135 F.3d 891, 904 (3d Cir. 1998). The court stated that the "significant privacy concerns attached to the home and employees' interest in avoiding a barrage of unsolicited [mail, telephone or personal] contact weighs heavily in our consideration." *Id.* In a different context involving citizen complaints to a city about a municipal airport, the court also found that those citizens had significant privacy interests in their home addresses and telephone numbers and that public disclosure of such information would have a chilling effect on future complaints. *City of San Jose v. Superior Court*, 74 Cal.App.4th 1008, 88 Cal. Rptr. 2d 552, 555 (1999).

Although home addresses and telephone numbers are often publicly available through telephone directories or similar services, that fact does not eliminate an individual's privacy interest in such information. The Supreme Court has noted that the privacy interest encompasses an individual's control of information concerning his or her person and that "an individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form." *Dep't of Defense*, 510 U.S. at 500.

Here, individuals who submitted private residence information on the old version of the Arts Commission's comment card for purposes of making public comment at an Arts Commission meeting have not surrendered their rights to privacy in providing such information. They should not be deemed to have waived their rights to privacy simply because they included their residence information on a public comment card. Indeed, members of the public may speak anonymously. Simply put, disclosing the private residence information of individual members of the public who attend or speak at the Arts Commission meetings neither sheds light on, nor enhances the public's understanding of, the operations of the Arts Commission. As we have previously explained, the Arts Commission has updated its comment cards to clarify that individuals may speak anonymously and that they are not required to complete a public comment card, or provide any specific identifying information, in order to make public comment.

In sum, where the disclosure of a record would violate a citizen's privacy rights, the Public Records Act and the Sunshine Ordinance do not require such disclosure.

Sincerely,

Kate Patterson  
Public Relations Manager

cc: Director of Cultural Affairs Tom DeCaigny, Commission Secretary Sharon Page-Ritchie,  
Peter Warfield

SUNSHINE ORDINANCE  
TASK FORCE



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. (415) 554-7724  
Fax No. (415) 554-7854  
TDD/TTY No. (415) 554-5227

March 7, 2013

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

**Re: Compliance and Amendments Committee recommendation for referral to the Ethics Commission in the case of the Library Users Association against the Arts Commission for failing to respond to the Immediate Disclosure Request for redacted speaker contact information.**

**(Sunshine Ordinance Complaint No. 12001, The Library Users Association v. the Arts Commission)**

Dear Ethics Commission,

On March 7, 2012, the Task Force heard Complaint No. 12001, by the Library Users Association ("Complainant") against the San Francisco Arts Commission ("Respondent"). The Complaint alleged that Respondent had failed to provide un-redacted copies of speaker cards from the September 12, 2011 and November 16, 2011 Arts Commission meetings, as well as the August 17, 2011 and October 19, 2011 Visual Arts Committee meetings, in response to Complainant's December 15, 2011 Immediate Disclosure Request.

Peter Warfield represented Complainant during the hearing, while Kate Patterson represented Respondent. The information redacted by Respondent was personal contact information provided by speakers on speaker cards required to be filled out the Commission for all speakers on items on the agenda of the public meetings in question. At the conclusion of the hearing, the Task Force found Respondent in violation of Sunshine Ordinance Sections 67.25(a) for failure to respond in a timely manner, 67.26 for failure to keep withholding to a minimum by providing un-redacted speaker cards, and 67.27 for failure to justify withholding the redacted information; and (2) to refer the matter to Compliance and Amendments Committee.

The Task Force issued an Order of Determination in this matter on April 5, 2012. The Order required that Respondent provide un-redacted speaker cards to Complainant within 5 days.

<http://www.sfgov.org/sunshine/>

2013 MAR -7 PM 4:56  
ETHICS COMMISSION  
S.F. GOV.

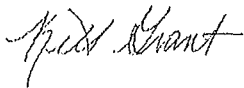
On May 15, 2012 the Compliance and Amendments Committee heard Peter Warfield (Complainant) provide an update on an order of determination from the March 7, 2012 full SOTF meeting. The Respondent (Kate Patterson) provided an update and responded to questions. The committee moved to refer the matter back to the Task Force with a recommendation that it be forwarded to the Ethics Commission.

At the December 5, 2012 SOTF meeting the Task Force moved to refer the Arts Commission to the Ethics Commission for violating Sections 67.25(a) for failure to respond to the immediate disclosure request in a timely manner, 67.26 for failure to keep withholding to a minimum by improperly redacting the information from the speaker cards, and 67.34 for willful failure to comply with the Order of Determination.

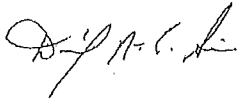
The Task Force recommends the Ethics commission investigate the Arts Commission for their willful failure to provide the Library Users Association with redacted contact information on speaker cards.

This request and referral is made under Section 67.30 (c) whereby the Task Force shall make referrals to a municipal office with enforcement power under the Sunshine 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.

Thank you for your timely attention to this matter. A description of the Task Force hearing, violations found, and decision are described in the attached Order of Determination. Please contact the Sunshine Ordinance Task Force Administrator at [sotf@sfgov.org](mailto:sotf@sfgov.org) or (415) 554-7724 with any questions or concerns.



Kitt Grant, Chair  
Sunshine Ordinance Task Force



David Sims, Member Attorney  
Sunshine Ordinance Task Force

Encl.

cc: Peter Warfield, Library Users Association, Complainant  
Kate Patterson, Arts Commission, Respondent  
Jerry Threet, Deputy City Attorney



**SUNSHINE ORDINANCE  
TASK FORCE**



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. (415) 554-7724  
Fax No. (415) 554-7854  
TDD/TTY No. (415) 554-5227

**ORDER OF DETERMINATION**  
April 5, 2012

**DATE THE DECISION ISSUED**  
March 7, 2012

**LIBRARY USERS ASSOCIATION v. SAN FRANCISCO ARTS COMMISSION (CASE NO. 12001)**

**FACTS OF THE CASE**

Complainant Library Users Association alleged that the San Francisco Arts Commission ("SFAC") violated the Sunshine Ordinance by improperly redacting contact information on speaker cards responsive to a public records immediate disclosure request made on December 15, 2011.

**COMPLAINT FILED**

On January 13, 2012, Peter Warfield of the Library Users Association filed a complaint with the Sunshine Ordinance Task Force ("Task Force") against the SFAC alleging violations of Sunshine Ordinance public records provisions.

**HEARING ON THE COMPLAINT**

On March 7, 2012, Peter Warfield appeared before the Task Force and presented the Library User Association's complaint. Respondent SFAC was represented by Public Information Officer Kate Patterson, who presented SFAC's response.

On December 15, 2011, the Library Users Association requested electronic copies of speaker cards submitted by members of the public at Arts Commission meetings from September through November 2009 and September through December 2011 and at Visual Arts Committee meetings from September through November 2009 and in August 2011. The Library Users Association also requested to inspect the original speaker cards at SFAC's office.

On December 19, 2011, the SFAC secretary produced electronic copies of the existing speaker cards responsive to the request and offered dates for Mr. Warfield to pick up copies of the cards and listen to audio tapes at the SFAC office. When Mr. Warfield inspected the speaker cards on December 20, 2011, he learned that the SFAC had redacted contact information from the cards produced to him the previous day. Mr. Warfield alleged the SFAC had not previously notified the Library Users Association that information had been redacted or provided justification for the redactions.

**ORDER OF DETERMINATION**

Ms. Patterson stated that the SFAC redacted personal contact information from the speaker cards to protect individuals' rights to privacy pursuant to the California Constitution, Article 1, Section 1. She explained that the City Attorney's Office has advised the SFAC to redact personal contact information. She further explained the SFAC does not want to risk being the subject of a lawsuit for releasing personal information provided by members of the public.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Task Force concluded that the members of the public who submitted the speaker cards did not have a reasonable expectation of privacy that information submitted during a public meeting would be kept confidential. Although providing the information is not required to speak at a public meeting, the information was willingly provided to the SFAC, a public body, during a public meeting with the intention of speaking during public comment.

The Task Force further concluded that the speaker cards are public records pursuant to local and state public records laws, and the section of the California Constitution cited by the SFAC as justification for the redactions is not an exemption to disclosure of public records under either the Sunshine Ordinance or the California Public Records Act ("CPRA"). The Task Force additionally concluded that the speaker card information is not exempted under the personnel and medical records exemption in Section 6254(c) of the CPRA because the speaker cards are created in a public setting without same expectation of privacy as circumstances under which personnel, medical, and similar records are created.

In addition, the Task Force found that the SFAC failed to provide the Library Users Association with justification for withholding information at the time the speaker cards were produced.

The Task Force also concluded that the SFAC would benefit the public by placing language on speaker cards that notifies members of the public they are not required to complete a speaker card to speak during a public meeting.

**DECISION AND ORDER OF DETERMINATION**

The Task Force finds the SFAC in violation of Sunshine Ordinance Sections 67.25(a) for failure to respond to the immediate disclosure request in a timely manner, 67.26 for failure to keep withholding to a minimum by improperly redacting the information from the speaker cards, and 67.27 for failure to justify withholding the redacted information.

The SFAC shall release the speaker cards requested without redactions within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on April 17, 2012 at 4:00 p.m. in Room 408 of City Hall. The Committee shall monitor compliance with this Order.

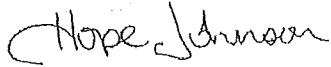
This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 7, 2012, by the following vote: (Washburn/Manneh)

Ayes: 7 – Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Noes: 0

**ORDER OF DETERMINATION**

Absent: 1 - Cauthen  
Excused: 2 – Chan, Wolfe  
Recused: 0



Hope Johnson, Chair  
Sunshine Ordinance Task Force

cc: Peter Warfield, Library Users Association, Complainant  
Kate Patterson, Arts Commission, Respondent  
Tom DeCaigny, Director of Cultural Affairs, Arts Commission  
Jerry Threet, Deputy City Attorney



000001

Date March 7, 2012

Item No. 13 & 14

File No. 12001

**SUNSHINE ORDINANCE TASK FORCE**  
AGENDA PACKET CONTENTS LIST

ITEMS

Complaint submittal  
Respondent's Response  
Correspondence

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Completed by: Andrea Ausberry Date March 1, 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.



Sunshine Complaint  
complaints

to:

sotf

01/13/2012 08:58 AM

Hide Details

From: <complaints@sfgov.org>

To: <sotf@sfgov.org>

To:sotf@sfgov.org

Email:complaints@sfgov.org

DEPARTMENT:Arts Commission

CONTACTED:

PUBLIC\_RECORDS\_VIOLATION:Yes

PUBLIC\_MEETING\_VIOLATION:No

MEETING\_DATE:

SECTIONS\_VIOLATED:

DESCRIPTION:Library Users Association requested Speaker Cards for specific Arts Commission meetings in Fall, 2009 and in Fall, 2011 and received the following: 1- No speaker cards for 2009. 2- Speaker cards for requested meetings in 2011 were sent electronically with no indication that there were redactions; many just had a blank in the space provided for contact information. When we insisted on reviewing the original documents at the office, and not just the photocopies we were offered, we found white pieces of paper pasted over perhaps half of the cards where contact information had been provided by the speakers. There was no explanation in the written material provided to us. Only when we asked about the originals being redacted were we told that these were [supposedly] confidential personal addresses, but without any citation of statutory authority.

HEARING:Yes

PRE-HEARING:No

DATE:1/13/2012

NAME:Library Users Association

ADDRESS:

CITY:

ZIP:

PHONE:753-2180

CONTACT\_EMAIL:libraryusers2004@yahoo.com

ANONYMOUS:

CONFIDENTIALITY\_REQUESTED:No



## SAN FRANCISCO ARTS COMMISSION

EDWIN M. LEE  
MAYOR

TOM DECAIGNY  
DIRECTOR OF  
CULTURAL AFFAIRS

## PROGRAMS

CIVIC ART COLLECTION  
CIVIC DESIGN REVIEW  
COMMUNITY ARTS  
& EDUCATION  
CULTURAL EQUITY GRANTS  
PUBLIC ART  
STREET ARTISTS LOBBY

ARTS COMMISSION GALLERY  
401 VAN NESS AVENUE  
SAN FRANCISCO  
94102

February 6, 2012

Honorable Members  
Sunshine Task Force  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102

Re: Sunshine Complaint #12001  
Library Users Association v. Arts Commission

Dear Honorable Members of the Sunshine Task Force:

I am writing in response to complaint #12001, submitted on January 13, 2012 by Library Users Association, and received by our office on January 27, 2012.

The complaint says the following:

"Library Users Association requested Speaker Cards for specific Arts Commission meetings in Fall, 2009 and in Fall, 2011 and received the following: 1- No speaker cards for 2009. 2-Speaker cards for requested meetings in 2011 were sent electronically with no indication that there were redactions; many just had a blank in the space provided for contact information. When we insisted on reviewing the original documents at the office, and not just the photocopies we were offered, we found white pieces of paper pasted over perhaps half of the cards where contact information had been provided by the speakers. There was no explanation in the written material provided to us. Only when we asked about the originals being redacted were we told that these were [supposedly] confidential personal addresses, but without any citation of statutory authority."

On December 15, 2011, Mr. Peter Warfield of Library Users Association submitted an e-mail request for the following:

1. Filled-out Speaker cards for the (a) Arts Commission meetings, and (b) Visual Arts Committee meetings of September, October, and November of 2009 (two years ago).

2. Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received, thank you) and Visual Arts Committee meetings of August 17, 2011 through the present."



CITY AND COUNTY OF  
SAN FRANCISCO

Sunshine Task Force re: Sunshine Complaint #12001  
Library Users Association v. Arts Commission

February 6, 2012  
Page 2

On December 19, 2011, I replied to his request by e-mail with the explanation that there were no speaker cards responsive to his request number 1, and I supplied pdf copies of speaker cards for the following meetings in response to his request number 2:

full Commission September 12, 2011  
full Commission November 16, 2011  
Visual Arts Committee August 17, 2011  
Visual Arts Committee October 19, 2011

I further explained that there were no cards for any of the other meetings he had requested. To protect the individuals' right to privacy under the California Constitution, Article I, Section 1, I blocked out any personal addresses (but not business addresses) that had been written on the above cards before making pdf files and photocopies. I also advised Mr. Warfield that paper copies of the same documents were at our front desk for him to pick up at his convenience.

For your convenience, we are enclosing a copy of the e-mail messages referred to above.

Finally, please be advised that the Arts Commission has revised the design of its speaker cards to remove the line for the speaker's address.

Very truly yours,

Sharon Page Ritchie  
Commission Secretary

spr

cc: Tom DeCalgny, Director of Cultural Affairs

Encl: E-mail from Library Users Association, December 15, 2011 and reply from Sharon Page Ritchie, San Francisco Arts Commission, December 19, 2011



**Page Ritchie, Sharon**

---

**From:** Page\_Ritchie, Sharon  
**Sent:** Monday, December 19, 2011 11:37 AM  
**To:** 'libraryusers2004@yahoo.com'; Beltran, JD  
**Cc:** Krell, Rebekah  
**Subject:** RE: Immediate Disclosure Request - Speaker Cards, additional dates  
**Attachments:** September\_12\_2011\_comment\_cards.pdf; VAC Public Comment Cards Aug-Dec 2011.pdf; November\_16\_2011\_comment\_cards.pdf

In response to your request below, there are no speaker cards responsive to your request number 1 below.

In response to your request number 2 below, I am attaching copies of speaker cards for the following meetings:

full Commission September 12, 2011  
 full Commission November 16, 2011  
 Visual Arts Committee August 17, 2011  
 Visual Arts Committee October 19, 2011

There are no speaker cards for any of the other meetings you have requested.

Hard copies of these cards are waiting for you at the front desk of the Arts Commission office. You may pick them up at your convenience during regular business hours.

In response to your voicemail this morning, requesting times to listen to recordings of meetings (copies of which have been supplied to you), available times are today, Monday, December 19 from 2:30 to 3:30, or tomorrow, Tuesday, December 20 from 2:30 to 3:30. Please let me know when you expect to come in.

Please note that the Arts Commission offices will be closed during the entire week of December 26 and the City holiday of Monday, January 2, 2012.

Sharon Page Ritchie  
 Commission Secretary  
 San Francisco Arts Commission  
 415/252-2591

Website: <http://www.sfartscommission.org>  
 e-newsletter: <http://sfartscommission.org/newsletter>  
 Twitter: <http://www.twitter.com/SFAC>  
 Facebook: <http://www.facebook.com/sfartscommission>  
 YouTube: <http://www.youtube.com/ArtsCommission>  
 Flickr: <http://www.flickr.com/photos/sfac>

**From:** Library Users Association [mailto:libraryusers2004@yahoo.com]  
**Sent:** Thursday, December 15, 2011 3:48 PM  
**To:** Beltran, JD  
**Cc:** Page\_Ritchie, Sharon  
**Subject:** Immediate Disclosure Request - Speaker Cards, additional dates.

Dear Ms. Beltran:

A. Library Users Association would like to inspect, at your offices, the following:

1. Filled-out Speaker cards for the (a) Arts Commission meetings, and (b) Visual Arts Committee meetings of September,

000006

October, and November of 2009 (two years ago).

2. Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received, thank you) and Visual Arts Committee meetings of August 17, 2011 through the present.

If there are no speaker cards for a particular date, please provide a blank speaker card for that date.

Please provide these on a rolling basis, if necessary.

B. We would also like to receive these electronically as well.

Please note that a few of the speaker card copies recently supplied for December 5 and 12, 2011 are difficult or impossible to read, so we would like to see the originals of those, as well as the ones above, at a future visit to the department.

Thank you for your attention to this.

Sincerely,

Peter Warfield  
Executive Director  
Library Users Association  
415/753-2180

File No. 12001SOTF Item No. \_\_\_\_\_  
CAC Item No. 10**SUNSHINE ORDINANCE TASK FORCE**  
AGENDA PACKET CONTENTS LISTSunshine Ordinance Task Force

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

Compliance and Amendments CommitteeDate: May 15, 2012**CAC/SOTF**

<input checked="" type="checkbox"/>	<input type="checkbox"/>	Order of Determination
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Memo
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Complaint
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Response
<input type="checkbox"/>	<input type="checkbox"/>	
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**OTHER**

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Completed by: Andrea Ausberry Date May 11, 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.

SUNSHINE ORDINANCE  
TASK FORCE



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. (415) 554-7724  
Fax No. (415) 554-7854  
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION  
April 5, 2012

DATE THE DECISION ISSUED  
March 7, 2012

LIBRARY USERS ASSOCIATION v. SAN FRANCISCO ARTS COMMISSION (CASE NO.  
12001)

FACTS OF THE CASE

Complainant Library Users Association alleged that the San Francisco Arts Commission ("SFAC") violated the Sunshine Ordinance by improperly redacting contact information on speaker cards responsive to a public records immediate disclosure request made on December 15, 2011.

COMPLAINT FILED

On January 13, 2012, Peter Warfield of the Library Users Association filed a complaint with the Sunshine Ordinance Task Force ("Task Force") against the SFAC alleging violations of Sunshine Ordinance public records provisions.

HEARING ON THE COMPLAINT

On March 7, 2012, Peter Warfield appeared before the Task Force and presented the Library User Association's complaint. Respondent SFAC was represented by Public Information Officer Kate Patterson, who presented SFAC's response.

On December 15, 2011, the Library Users Association requested electronic copies of speaker cards submitted by members of the public at Arts Commission meetings from September through November 2009 and September through December 2011 and at Visual Arts Committee meetings from September through November 2009 and in August 2011. The Library Users Association also requested to inspect the original speaker cards at SFAC's office.

On December 19, 2011, the SFAC secretary produced electronic copies of the existing speaker cards responsive to the request and offered dates for Mr. Warfield to pick up copies of the cards and listen to audio tapes at the SFAC office. When Mr. Warfield inspected the speaker cards on December 20, 2011, he learned that the SFAC had redacted contact information from the cards produced to him the previous day. Mr. Warfield alleged the SFAC had not previously notified the Library Users Association that information had been redacted or provided justification for the redactions.

## CITY AND COUNTY OF SAN FRANCISCO

## SUNSHINE ORDINANCE TASK FORCE

## ORDER OF DETERMINATION

Ms. Patterson stated that the SFAC redacted personal contact information from the speaker cards to protect individuals' rights to privacy pursuant to the California Constitution, Article 1, Section 1. She explained that the City Attorney's Office has advised the SFAC to redact personal contact information. She further explained the SFAC does not want to risk being the subject of a lawsuit for releasing personal information provided by members of the public.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded that the members of the public who submitted the speaker cards did not have a reasonable expectation of privacy that information submitted during a public meeting would be kept confidential. Although providing the information is not required to speak at a public meeting, the information was willingly provided to the SFAC, a public body, during a public meeting with the intention of speaking during public comment.

The Task Force further concluded that the speaker cards are public records pursuant to local and state public records laws, and the section of the California Constitution cited by the SFAC as justification for the redactions is not an exemption to disclosure of public records under either the Sunshine Ordinance or the California Public Records Act ("CPRA"). The Task Force additionally concluded that the speaker card information is not exempted under the personnel and medical records exemption in Section 6254(c) of the CPRA because the speaker cards are created in a public setting without same expectation of privacy as circumstances under which personnel, medical, and similar records are created.

In addition, the Task Force found that the SFAC failed to provide the Library Users Association with justification for withholding information at the time the speaker cards were produced.

The Task Force also concluded that the SFAC would benefit the public by placing language on speaker cards that notifies members of the public they are not required to complete a speaker card to speak during a public meeting.

## DECISION AND ORDER OF DETERMINATION

The Task Force finds the SFAC in violation of Sunshine Ordinance Sections 67.25(a) for failure to respond to the immediate disclosure request in a timely manner, 67.26 for failure to keep withholding to a minimum by improperly redacting the information from the speaker cards, and 67.27 for failure to justify withholding the redacted information.

The SFAC shall release the speaker cards requested without redactions within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on April 17, 2012 at 4:00 p.m. in Room 408 of City Hall. The Committee shall monitor compliance with this Order.

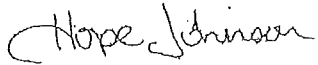
This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 7, 2012, by the following vote: (Washburn/Manneh)  
Ayes: 7 – Snyder, Knee, Manneh, Washburn, Costa, West, Johnson  
Noes: 0

CITY AND COUNTY OF SAN FRANCISCO

SUNSHINE ORDINANCE TASK FORCE

ORDER OF DETERMINATION

Absent: 1 - Cauthen  
Excused: 2 - Chan, Wolfe  
Recused: 0



Hope Johnson, Chair  
Sunshine Ordinance Task Force

cc: Peter Warfield, Library Users Association, Complainant  
Kate Patterson, Arts Commission, Respondent  
Tom DeCaigny, Director of Cultural Affairs, Arts Commission  
Jerry Threet, Deputy City Attorney

## CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA  
City Attorney

## OFFICE OF THE CITY ATTORNEY

MICHAEL R. KARNS  
Deputy City Attorney

Direct Dial: (415) 554-3970  
Email: michael.karns@sfgov.org

## MEMORANDUM

TO: Sunshine Ordinance Task Force  
FROM: Michael Karns  
Deputy City Attorney  
DATE: March 2, 2012  
RE: Complaint 12001 – Library Users Association v. SF Arts Commission

## BACKGROUND

Complainant Library Users Association ("Complainant") alleges that the San Francisco Arts Commission ("Commission") failed to provide documents responsive to their December 15, 2011 public records request.

## COMPLAINT

On January 13, 2012, Complainant filed this complaint against Commission, without specifying which provision of the Ordinance it believed had been violated.

## JURISDICTION

Commission is a department under the Ordinance. Therefore, in general, the Task Force has jurisdiction to hear public records complaints against Commission. Commission does not contest jurisdiction.

## APPLICABLE STATUTORY SECTION(S):

## Section 67 of the San Francisco Administrative Code:

- Section 67.20(b) defines "public information".
- Section 67.21 governs responses to a public records request.
- Section 67.25 governs immediacy of response.
- Section 67.26 governs withholding of records.
- Section 67.27 governs written justification for withholding of records.

## Section 6250 et seq. of the Cal. Gov't Code

- Section 6252(e) defines "public record".
- Section 6253 governs the release of public records and the timing of responses.

## APPLICABLE CASE LAW:

None.

## ISSUES TO BE DETERMINED

## Uncontested/Contested Facts

On December 15, 2011, Complainant sent a request for documents to Commission via email. Complainant's email is quoted, in relevant part, here:

*1. Filled-out Speaker cards for the (a) Arts Commission meetings, and (b) Visual Arts Committee meetings of September, October, November of 2009 (two years ago).*

## CITY AND COUNTY OF SAN FRANCISCO

## OFFICE OF THE CITY ATTORNEY

## MEMORANDUM

TO: Sunshine Ordinance Task Force  
 DATE: March 2, 2012  
 PAGE: 2  
 RE: Complaint 12001 – Library Users Association v. SF Arts Commission

*2. Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received, thank you) and Visual Arts Committee meetings of August 17, 2011 through the present."*

On December 19, 2011, Commission replied to this request via email with an explanation that speaker cards responsive to request #1, those from Arts Commission meetings and Visual Arts Committee meetings of September, October, and November 2009, did not exist. Commission also provided, at this time and over email, PDF copies of speaker cards from the September 12, 2011 and November 16, 2011 Arts Commission meetings, as well as speaker cards from the August 17, 2011 and October 19, 2011 Visual Arts Committee meetings, in response to Complainant's request #2. Commission also explained that no cards for any of the other meetings requested were in existence.

As part of Commission's response, Commission redacted certain information from the speaker cards before providing them to Complainant. Complainant alleges that no explanation was given for the redactions when the documents were produced.

On or about December 20, 2011, Complainant visited the Arts Commission offices to inspect the speaker cards in person. Complainant alleges that during this inspection, it realized that certain information had been redacted. Complainant alleges that when it asked for the reason for the redaction, only then was it informed that the speaker cards contained confidential personal address information. Specifically, Commission informed Complainant at that time that to protect the privacy interests of those who spoke at the meetings, personal address information for the speakers was redacted. Commission further informed Complainant that if the address information listed was a business address, it was not redacted. Complainant alleges that no explanation for the redactions was provided at the time the original response was made.

In its reply to Complainant's complaint to the Task Force, Commission does not dispute that certain personal address information was redacted from the speaker cards before they were provided to Complainant. Commission argues that such redaction is necessary "to protect the individuals' right to privacy under California Constitution, Article 1, Section 1." Commission also states in its reply to the Task Force that it has revised the design of its speaker cards to remove the line for the speakers address, thereby avoiding the necessity of redaction of this information in the future.

#### QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- What was the nature and extent of the search the Department conducted with regard to documents responsive to Complainant's December 15, 2011 request?
- Did Commission's email response on December 19, 2011 contain any assertion that certain information had been redacted from the speaker cards?
- Did Commission's email response on December 19, 2011 contain any justification for why certain information on the cards had been redacted?

#### LEGAL ISSUES/LEGAL DETERMINATIONS:



CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

## MEMORANDUM

TO: Sunshine Ordinance Task Force  
DATE: March 2, 2012  
PAGE: 3  
RE: Complaint 12001 – Library Users Association v. SF Arts Commission

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- If the Commission's email response on December 19, 2011 did not contain any assertion of or justification for the redaction of certain information from the speaker cards, did this omission constitute a violation of §67.27 of the Ordinance?

## CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.



## SAN FRANCISCO ARTS COMMISSION

EDWIN M. LEE  
MAYOR

TOM DeCAIGNY  
DIRECTOR OF  
CULTURAL AFFAIRS

## PROGRAMS

CIVIC ART COLLECTION  
CIVIC DESIGN REVIEW  
COMMUNITY ARTS  
& EDUCATION  
CULTURAL BOARDS GRANTS  
PUBLIC ART  
STREET ARTIST LICENSES

ARTS COMMISSION GALLERY  
401 VAN NESS AVENUE  
415.554.6080

RECEIVED  
SAN FRANCISCO ARTS COMMISSION  
FEB 14 2012

February 6, 2012

Honorable Members  
Sunshine Task Force  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102

Re: Sunshine Complaint #12001  
Library Users Association v. Arts Commission

Dear Honorable Members of the Sunshine Task Force:

I am writing in response to complaint #12001, submitted on January 13, 2012 by Library Users Association, and received by our office on January 27, 2012.

The complaint says the following:

"Library Users Association requested Speaker Cards for specific Arts Commission meetings in Fall, 2009 and in Fall, 2011 and received the following: 1- No speaker cards for 2009. 2-Speaker cards for requested meetings in 2011 were sent electronically with no indication that there were redactions; many just had a blank in the space provided for contact information. When we insisted on reviewing the original documents at the office, and not just the photocopies we were offered, we found white pieces of paper pasted over perhaps half of the cards where contact information had been provided by the speakers. There was no explanation in the written material provided to us. Only when we asked about the originals being redacted were we told that these were [supposedly] confidential personal addresses, but without any citation of statutory authority."

On December 15, 2011, Mr. Peter Warfield of Library Users Association submitted an e-mail request for the following:

1. Filled-out Speaker cards for the (a) Arts Commission meetings; and (b) Visual Arts Committee meetings of September, October, and November of 2009 (two years ago).

2. Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received, thank you) and Visual Arts Committee meetings of August 17, 2011 through the present."



CITY AND COUNTY OF  
SAN FRANCISCO

Sunshine Task Force re: Sunshine Complaint #12001  
Library Users Association v. Arts Commission

February 6, 2012  
Page 2

On December 19, 2011, I replied to his request by e-mail with the explanation that there were no speaker cards responsive to his request number 1, and I supplied pdf copies of speaker cards for the following meetings in response to his request number 2:

full Commission September 12, 2011

full Commission November 16, 2011

Visual Arts Committee August 17, 2011

Visual Arts Committee October 19, 2011

I further explained that there were no cards for any of the other meetings he had requested. To protect the individuals' right to privacy under the California Constitution, Article I, Section 1, I blocked out any personal addresses (but not business addresses) that had been written on the above cards before making pdf files and photocopies. I also advised Mr. Warfield that paper copies of the same documents were at our front desk for him to pick up at his convenience.

For your convenience, we are enclosing a copy of the e-mail messages referred to above.

Finally, please be advised that the Arts Commission has revised the design of its speaker cards to remove the line for the speaker's address.

Very truly yours,

Sharon Page Ritchie  
Commission Secretary

spr

cc: Tom DeCaigny, Director of Cultural Affairs

Encl: E-mail from Library Users Association, December 15, 2011 and reply from Sharon Page Ritchie, San Francisco Arts Commission, December 19, 2011

**Page Ritchie, Sharon**

---

**From:** Page\_Ritchie, Sharon  
**Sent:** Monday, December 19, 2011 11:37 AM  
**To:** 'libraryusers2004@yahoo.com'; Beltran, JD  
**Cc:** Krell, Rebekah  
**Subject:** RE: Immediate Disclosure Request - Speaker Cards, additional dates  
**Attachments:** September\_12\_2011\_comment\_cards.pdf; VAC Public Comment Cards Aug-Dec 2011.pdf; November\_16\_2011\_comment\_cards.pdf

In response to your request below, there are no speaker cards responsive to your request number 1 below.

In response to your request number 2 below, I am attaching copies of speaker cards for the following meetings:  
full Commission September 12, 2011  
full Commission November 16, 2011  
Visual Arts Committee August 17, 2011  
Visual Arts Committee October 19, 2011

There are no speaker cards for any of the other meetings you have requested.

Hard copies of these cards are waiting for you at the front desk of the Arts Commission office. You may pick them up at your convenience during regular business hours.

In response to your voicemail this morning, requesting times to listen to recordings of meetings (copies of which have been supplied to you), available times are today, Monday, December 19 from 2:30 to 3:30, or tomorrow, Tuesday, December 20 from 2:30 to 3:30. Please let me know when you expect to come in.

Please note that the Arts Commission offices will be closed during the entire week of December 26 and the City holiday of Monday, January 2, 2012.

Sharon Page Ritchie  
Commission Secretary  
San Francisco Arts Commission  
415/252-2591

Website: <http://www.sfartscommission.org>  
e-newsletter: <http://sfartscommission.org/newsletter>  
Twitter: <http://www.twitter.com/SFAC>  
Facebook: <http://www.facebook.com/sfartscommission>  
YouTube: <http://www.youtube.com/ArtsCommission>  
Flickr: <http://www.flickr.com/photos/sfac>

**From:** Library Users Association [mailto:libraryusers2004@yahoo.com]  
**Sent:** Thursday, December 15, 2011 3:48 PM  
**To:** Beltran, JD  
**Cc:** Page\_Ritchie, Sharon  
**Subject:** Immediate Disclosure Request - Speaker Cards, additional dates

Dear Ms. Beltran:

A. Library Users Association would like to inspect, at your offices, the following:

1. Filled-out Speaker cards for the (a) Arts Commission meetings, and (b) Visual Arts Committee meetings of September,

October, and November of 2009 (two years ago).

2. Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received, thank you) and Visual Arts Committee meetings of August 17, 2011 through the present.

If there are no speaker cards for a particular date, please provide a blank speaker card for that date.

Please provide these on a rolling basis, if necessary.

B. We would also like to receive these electronically as well.

Please note that a few of the speaker card copies recently supplied for December 5 and 12, 2011 are difficult or impossible to read, so we would like to see the originals of those, as well as the ones above, at a future visit to the department.

Thank you for your attention to this.

Sincerely,

Peter Warfield  
Executive Director  
Library Users Association  
415/753-2180

Sunshine Complaint  
complaints

to:

sotf

01/13/2012 08:58 AM

Hide Details

From: &lt;complaints@sfgov.org&gt;

To: &lt;sotf@sfgov.org&gt;

To:sotf@sfgov.org

Email:complaints@sfgov.org

DEPARTMENT:Arts Commission

CONTACTED:

PUBLIC\_RECORDS\_VIOLATION:Yes

PUBLIC\_MEETING\_VIOLATION:No

MEETING\_DATE:

SECTIONS\_VIOLATED:

DESCRIPTION:Library Users Association requested Speaker Cards for specific Arts Commission meetings in Fall, 2009 and in Fall, 2011 and received the following: 1- No speaker cards for 2009. 2- Speaker cards for requested meetings in 2011 were sent electronically with no indication that there were redactions; many just had a blank in the space provided for contact information. When we insisted on reviewing the original documents at the office, and not just the photocopies we were offered, we found white pieces of paper pasted over perhaps half of the cards where contact information had been provided by the speakers. There was no explanation in the written material provided to us. Only when we asked about the originals being redacted were we told that these were [supposedly] confidential personal addresses, but without any citation of statutory authority.

HEARING:Yes

PRE-HEARING:No

DATE:1/13/2012

NAME:Library Users Association

ADDRESS:

CITY:

ZIP:

PHONE:753-2180

CONTACT\_EMAIL:libraryusers2004@yahoo.com

ANONYMOUS:

CONFIDENTIALITY\_REQUESTED:No

File No. 12001SOTF Item No. 4  
CAC Item No. \_\_\_\_\_**SUNSHINE ORDINANCE TASK FORCE**  
AGENDA PACKET CONTENTS LISTSunshine Ordinance Task Force (SOTF)Date: December 5, 2012Compliance and Amendments Committee (CAC)

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

**CAC/SOTF**

<input type="checkbox"/>	<input checked="" type="checkbox"/>	Memorandum
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Order of Determination
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Complaint and Supporting documents
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Respondent's Response
<input type="checkbox"/>	<input type="checkbox"/>	Minutes
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<input type="checkbox"/>	<input type="checkbox"/>	_____

Completed by: Andrea Ausberry Date November 27, 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.

SUNSHINE ORDINANCE  
TASK FORCE



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. (415) 554-7724  
Fax No. (415) 554-7854  
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION  
April 5, 2012

DATE THE DECISION ISSUED  
March 7, 2012

LIBRARY USERS ASSOCIATION v. SAN FRANCISCO ARTS COMMISSION (CASE NO. 12001)

FACTS OF THE CASE

Complainant Library Users Association alleged that the San Francisco Arts Commission ("SFAC") violated the Sunshine Ordinance by improperly redacting contact information on speaker cards responsive to a public records immediate disclosure request made on December 15, 2011.

COMPLAINT FILED

On January 13, 2012, Peter Warfield of the Library Users Association filed a complaint with the Sunshine Ordinance Task Force ("Task Force") against the SFAC alleging violations of Sunshine Ordinance public records provisions.

HEARING ON THE COMPLAINT

On March 7, 2012, Peter Warfield appeared before the Task Force and presented the Library User Association's complaint. Respondent SFAC was represented by Public Information Officer Kate Patterson, who presented SFAC's response.

On December 15, 2011, the Library Users Association requested electronic copies of speaker cards submitted by members of the public at Arts Commission meetings from September through November 2009 and September through December 2011 and at Visual Arts Committee meetings from September through November 2009 and in August 2011. The Library Users Association also requested to inspect the original speaker cards at SFAC's office.

On December 19, 2011, the SFAC secretary produced electronic copies of the existing speaker cards responsive to the request and offered dates for Mr. Warfield to pick up copies of the cards and listen to audio tapes at the SFAC office. When Mr. Warfield inspected the speaker cards on December 20, 2011, he learned that the SFAC had redacted contact information from the cards produced to him the previous day. Mr. Warfield alleged the SFAC had not previously notified the Library Users Association that information had been redacted or provided justification for the redactions.



## CITY AND COUNTY OF SAN FRANCISCO

## SUNSHINE ORDINANCE TASK FORCE

**ORDER OF DETERMINATION**

Ms. Patterson stated that the SFAC redacted personal contact information from the speaker cards to protect individuals' rights to privacy pursuant to the California Constitution, Article 1, Section 1. She explained that the City Attorney's Office has advised the SFAC to redact personal contact information. She further explained the SFAC does not want to risk being the subject of a lawsuit for releasing personal information provided by members of the public.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Task Force concluded that the members of the public who submitted the speaker cards did not have a reasonable expectation of privacy that information submitted during a public meeting would be kept confidential. Although providing the information is not required to speak at a public meeting, the information was willingly provided to the SFAC, a public body, during a public meeting with the intention of speaking during public comment.

The Task Force further concluded that the speaker cards are public records pursuant to local and state public records laws, and the section of the California Constitution cited by the SFAC as justification for the redactions is not an exemption to disclosure of public records under either the Sunshine Ordinance or the California Public Records Act ("CPRA"). The Task Force additionally concluded that the speaker card information is not exempted under the personnel and medical records exemption in Section 6254(c) of the CPRA because the speaker cards are created in a public setting without same expectation of privacy as circumstances under which personnel, medical, and similar records are created.

In addition, the Task Force found that the SFAC failed to provide the Library Users Association with justification for withholding information at the time the speaker cards were produced.

The Task Force also concluded that the SFAC would benefit the public by placing language on speaker cards that notifies members of the public they are not required to complete a speaker card to speak during a public meeting.

**DECISION AND ORDER OF DETERMINATION**

The Task Force finds the SFAC in violation of Sunshine Ordinance Sections 67.25(a) for failure to respond to the immediate disclosure request in a timely manner, 67.26 for failure to keep withholding to a minimum by improperly redacting the information from the speaker cards, and 67.27 for failure to justify withholding the redacted information.

The SFAC shall release the speaker cards requested without redactions within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on April 17, 2012 at 4:00 p.m. in Room 408 of City Hall. The Committee shall monitor compliance with this Order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 7, 2012, by the following vote: (Washburn/Manneh)

Ayes: 7 – Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Noes: 0

CITY AND COUNTY OF SAN FRANCISCO

SUNSHINE ORDINANCE TASK FORCE

ORDER OF DETERMINATION

Absent: 1 - Cauthen  
Excused: 2 - Chan, Wolfe  
Recused: 0



Hope Johnson, Chair  
Sunshine Ordinance Task Force

cc: Peter Warfield, Library Users Association, Complainant  
Kate Patterson, Arts Commission, Respondent  
Tom DeCaigny, Director of Cultural Affairs, Arts Commission  
Jerry Threet, Deputy City Attorney

## CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA  
City Attorney

## OFFICE OF THE CITY ATTORNEY

MICHAEL R. KARNS  
Deputy City Attorney

Direct Dial: (415) 554-3970  
Email: michael.karns@sfgov.org

## MEMORANDUM

TO: Sunshine Ordinance Task Force  
FROM: Michael Karns  
Deputy City Attorney  
DATE: March 2, 2012  
RE: Complaint 12001 – Library Users Association v. SF Arts Commission

## BACKGROUND

Complainant Library Users Association ("Complainant") alleges that the San Francisco Arts Commission ("Commission") failed to provide documents responsive to their December 15, 2011 public records request.

## COMPLAINT

On January 13, 2012, Complainant filed this complaint against Commission, without specifying which provision of the Ordinance it believed had been violated.

## JURISDICTION

Commission is a department under the Ordinance. Therefore, in general, the Task Force has jurisdiction to hear public records complaints against Commission. Commission does not contest jurisdiction.

## APPLICABLE STATUTORY SECTION(S):

## Section 67 of the San Francisco Administrative Code:

- Section 67.20(b) defines "public information".
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- Section 67.27 governs written justification for withholding of records.

## Section 6250 et seq. of the Cal. Gov't Code

- Section 6252(e) defines "public record".
- Section 6253 governs the release of public records and the timing of responses.

## APPLICABLE CASE LAW:

None.

## ISSUES TO BE DETERMINED

## Uncontested/Contested Facts

On December 15, 2011, Complainant sent a request for documents to Commission via email. Complainant's email is quoted, in relevant part, here:

*1. Filled-out Speaker cards for the (a) Arts Commission meetings, and (b) Visual Arts Committee meetings of September, October, November of 2009 (two years ago).*

## CITY AND COUNTY OF SAN FRANCISCO

## OFFICE OF THE CITY ATTORNEY

## MEMORANDUM

TO: Sunshine Ordinance Task Force  
 DATE: March 2, 2012  
 PAGE: 2  
 RE: Complaint 12001 – Library Users Association v. SF Arts Commission

---

*2. Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received, thank you) and Visual Arts Committee meetings of August 17, 2011 through the present."*

On December 19, 2011, Commission replied to this request via email with an explanation that speaker cards responsive to request #1, those from Arts Commission meetings and Visual Arts Committee meetings of September, October, and November 2009), did not exist. Commission also provided, at this time and over email, PDF copies of speaker cards from the September 12, 2011 and November 16, 2011 Arts Commission meetings, as well as speaker cards from the August 17, 2011 and October 19, 2011 Visual Arts Committee meetings, in response to Complainant's request #2. Commission also explained that no cards for any of the other meetings requested were in existence.

As part of Commission's response, Commission redacted certain information from the speaker cards before providing them to Complainant. Complainant alleges that no explanation was given for the redactions when the documents were produced.

On or about December 20, 2011, Complainant visited the Arts Commission offices to inspect the speaker cards in person. Complainant alleges that during this inspection, it realized that certain information had been redacted. Complainant alleges that when it asked for the reason for the redaction, only then was it informed that the speaker cards contained confidential personal address information. Specifically, Commission informed Complainant at that time that to protect the privacy interests of those who spoke at the meetings, personal address information for the speakers was redacted. Commission further informed Complainant that if the address information listed was a business address, it was not redacted. Complainant alleges that no explanation for the redactions was provided at the time the original response was made.

In its reply to Complainant's complaint to the Task Force, Commission does not dispute that certain personal address information was redacted from the speaker cards before they were provided to Complainant. Commission argues that such redaction is necessary "to protect the individuals' right to privacy under California Constitution, Article 1, Section 1." Commission also states in its reply to the Task Force that it has revised the design of its speaker cards to remove the line for the speakers address, thereby avoiding the necessity of redaction of this information in the future.

**QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:**

- What was the nature and extent of the search the Department conducted with regard to documents responsive to Complainant's December 15, 2011 request?
- Did Commission's email response on December 19, 2011 contain any assertion that certain information had been redacted from the speaker cards?
- Did Commission's email response on December 19, 2011 contain any justification for why certain information on the cards had been redacted?

**LEGAL ISSUES/LEGAL DETERMINATIONS:**

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Sunshine Ordinance Task Force  
DATE: March 2, 2012  
PAGE: 3  
RE: Complaint 12001 – Library Users Association v. SF Arts Commission

- If the Commission's email response on December 19, 2011 did not contain any assertion of or justification for the redaction of certain information from the speaker cards, did this omission constitute a violation of §67.27 of the Ordinance?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.



## SAN FRANCISCO ARTS COMMISSION

EDWIN M. LEE  
MAYOR

TOM DeCAIGNY  
DIRECTOR OF  
CULTURAL AFFAIRS

## PROGRAMS

CIVIC ART COLLECTION  
CIVIC DESIGN REVIEW  
COMMUNITY ARTS  
& EDUCATION  
CULTURAL EQUITY GRANTS  
PUBLIC ART  
STREET ARTISTS LICENSES

ARTS COMMISSION GALLERY  
401 VAN NESS AVENUE  
415.534.6080

WWW.SFARTSCOMMISSION.ORG

ARTSCOMMISSION@SFGOV.ORG

May 29, 2012

RE: WRITTEN ORDER OF DETERMINATION OF APRIL 5, 2012 - LIBRARY USERS  
ASSOCIATION v. SAN FRANCISCO ARTS COMMISSION (CASE NO.12001)

Dear Honorable Members of the Sunshine Ordinance Task Force:

I am writing in response to the Written Order of Determination of April 5, 2012 in which the Sunshine Ordinance Task Force (SOTF) found the:

*SFAC in violation of Sunshine Ordinance Sections 67.25(a) for failure to respond to the immediate disclosure request in a timely manner, 67.26 for failure to keep withholding to a minimum by improperly redacting the information from the speaker cards, and 67.27 for failure to justify withholding the redacted information... The SFAC shall release the speaker cards requested without redactions within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on April 17, 2012 at 4:00 p.m. in Room 408 of City Hall. The Committee shall monitor compliance with this Order.*

While we acknowledged that our response to this Written Order of Determination was delayed, we are writing to reiterate our position that we acted appropriately by redacting the personal information of those individuals who filled out speaker cards at past commission meetings.

At the May 15, 2012 SOTF committee meeting, Ms. Patterson, acting as a representative for the San Francisco Arts Commission (SFAC), apologized to Mr. Warfield and the committee members for the agency's oversight in providing a written response to this order within in the required timeframe and failing to attend the Compliance and Amendments Committee meeting on April 17, 2012.

Herein lies the SFAC's official response to the Written Order of Determination of April 5, 2012 regarding the redaction of personal information from meeting speaker cards requested by Mr. Warfield on January 13, 2012.

In the SFAC's December 19, 2011 email response to Mr. Warfield's request for:

1. *Filled-out speaker cards for the (a) Arts Commission meetings, and (b) Visual Arts Committee meetings of September, October, and November of 2009 (two years ago).*
2. *Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received thank you) and Visual Arts Committee meetings of August 17, 2011 through the present.*



CITY AND COUNTY OF  
SAN FRANCISCO

The SFAC explained that there were no speaker cards responsive to his request number 1, and we supplied pdf copies of speaker cards for the following meetings in response to his requests number 2:

Full Commission September 12, 2011  
Full Commission November 16, 2011  
Visual Arts Committee August 17, 2011  
Visual Arts Committee October 19, 2011

We further explained that there were no cards for any of the other meetings he had requested, and that to protect the individuals' right to privacy under the California Constitution, Article 1, Section 1, we redacted the personal addresses (but not business addresses) that had been written on the above cards before making pdf files and photocopies. We also provided Mr. Warfield with paper copies of the same documents.

At the SOTF meeting on March 7, 2012, Ms. Patterson testified that under the advice of the agency's City Attorney the SFAC acted appropriately in redacting the personal information of the individuals who filled out the speaker cards citing the individuals' right to privacy under the California Constitution, Article 1, Section 1.

The SOTF found the SFAC in violation as follows:

*The Task Force concluded that the members of the public who submitted the speaker cards did not have a reasonable expectation of privacy that information submitted during a public meeting would be kept confidential. Although providing the information is not required to speak at a public meeting, the information was willingly provided to the SFAC, a public body, during a public meeting with the intention of speaking during public comment.*

*The Task Force further concluded that the speaker cards are public records pursuant to local and state public records laws, and the section of the California Constitution cited by the SFAC as justification for the redactions is not an exemption to disclosure of public records under either the Sunshine Ordinance or the California Public Records Act ("CPRA"). The Task Force additionally concluded that the speaker card information is not exempted under the personnel and medical records exemption in Section 6254(c) of the CPRA because the speaker cards are created in a public setting without same expectation of privacy as circumstances under which personnel, medical, and similar records are created.*

Today, despite the SOTF finding, the SFAC maintains that it acted appropriately by redacting the personal information of those who filled out speaker cards at past commission meetings, because at the time it was unclear to both the SFAC and the individuals in question that they would be waiving their Constitutional rights of privacy by participating in the Commission meeting by filling out residence information on a card.

At no point did the SFAC's speaker cards include information alerting the individual to the fact that once handed to the commission that his/her private information would be of public record. The SFAC has since modified its speaker cards so that it does not ask for one's personal address and it now includes a disclaimer that reads as follows: "You are not required to complete this card in order to make a public comment, and you may speak anonymously, if you wish."

Consistent with the federal and state constitutional provisions protecting the right of individuals to privacy, and consistent with the Sunshine Ordinance and Public Records Act, the Arts Commission properly withheld the private home address information of citizens who submitted public comment at the Arts Commission's meetings.

The "Findings and Purpose" section of the Sunshine Ordinance makes clear that the Sunshine Ordinance was not intended to eliminate or interfere with privacy rights. Specifically, Section 67.1(g) states that "[p]rivate entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected." S.F. Admin. Code 67.1(g). The Public Records Act, likewise, was adopted by the Legislature in the spirit of being "mindful of the right of individuals to privacy." Cal. Gov't Code Sec. 6250.

Section 6254(k) of the California Public Records Act permits an agency to decline to disclose "[r]ecords the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Cal. Gov't Code Sec. 6254(k). Article I, Section 1 of the California Constitution, in turn, protects a citizen's right to privacy and classifies such a right as an "inalienable" right. That provision states that "[a]ll people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy." (emphasis added). Cal. Const., Art. I, Sec. 1. In addition, the Public Records Act allows an agency to decline to disclose "[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." Cal. Gov't Code Sec. 6254(c). Thus, the Arts Commission, as a City agency, may not make disclosures that violate a citizen's right to privacy.

Courts have held one's residence and phone number to be private. In *United States Department of Defense v. Federal Labor Relations Authority*, 510 U.S. 487, 494-501 (1994) ("*Dep't of Defense*"), the United States Supreme Court held that the home addresses of federal employees are exempt from disclosure to unions under the privacy exemption in the Freedom of Information Act (FOIA). The California Public Records Act is modeled on the FOIA and the judicial construction and legislative history of the federal act guide the interpretation of the California Act. *A.C.L.U. v. Donkemejian* 32 Cal.3d 440, 447 (1982). The FOIA, like the Public Records Act, exempts from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). The Court found that employees have some "non-trivial privacy interest in nondisclosure" of their home address information and "in avoiding the influx of [unsolicited] union-related mail ... telephone calls or visits, that would follow disclosure." *Dep't of Defense*, 510 U.S. 487, 488. Accordingly, the Court was "reluctant to disparage the privacy of the home, which is accorded special consideration in our Constitution, laws, and traditions." *Id.* at 501. The Court found that the individual privacy interest in nondisclosure of home address information was "far from insignificant" especially "when we consider that other parties, such as commercial advertisers and solicitors, must have the same access" to such information under FOIA. *Id.*



Similarly, in *Sheet Metal Workers v. Dep't of Veteran Affairs*, the court found that workers hired to help renovate a veterans hospital had a significant privacy interest in the nondisclosure of their names and addresses. *Sheet Metal Workers v. Dep't of Veteran Affairs* 135 F.3d 891, 904 (3d Cir. 1998). The court stated that the "significant privacy concerns attached to the home and employees' interest in avoiding a barrage of unsolicited [mail, telephone or personal] contact weighs heavily in our consideration." *Id.* In a different context involving citizen complaints to a city about a municipal airport, the court also found that those citizens had significant privacy interests in their home addresses and telephone numbers and that public disclosure of such information would have a chilling effect on future complaints. *City of San Jose v. Superior Court*, 74 Cal.App.4th 1008, 88 Cal. Rptr. 2d 552, 555 (1999).

Although home addresses and telephone numbers are often publicly available through telephone directories or similar services, that fact does not eliminate an individual's privacy interest in such information. The Supreme Court has noted that the privacy interest encompasses an individual's control of information concerning his or her person and that "an individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form." *Dep't of Defense*, 510 U.S. at 500.

Here, individuals who submitted private residence information on the old version of the Arts Commission's comment card for purposes of making public comment at an Arts Commission meeting have not surrendered their rights to privacy in providing such information. They should not be deemed to have waived their rights to privacy simply because they included their residence information on a public comment card. Indeed, members of the public may speak anonymously. Simply put, disclosing the private residence information of individual members of the public who attend or speak at the Arts Commission meetings neither sheds light on, nor enhances the public's understanding of, the operations of the Arts Commission. As we have previously explained, the Arts Commission has updated its comment cards to clarify that individuals may speak anonymously and that they are not required to complete a public comment card, or provide any specific identifying information, in order to make public comment.

In sum, where the disclosure of a record would violate a citizen's privacy rights, the Public Records Act and the Sunshine Ordinance do not require such disclosure.

Sincerely,

Kate Patterson  
Public Relations Manager

cc: Director of Cultural Affairs Tom DeCaigny, Commission Secretary Sharon Page-Ritchie,  
Peter Warfield



Today's Agenda -- #12001 -- Arts Commission has sent nothing regarding Follow-up on  
Order of Determination  
Library Users Association

to:

sotf

05/15/2012 10:22 AM

Cc:

SharonPage\_Ritchie, TomDeCaigny, JD.Beltran

Please respond to libraryusers2004

Show Details

SOTF Administrator: Please forward to each SOTF member, including particularly the Compliance and Amendment Committee members, and copy us when you do so.

Thank you.

**Dear SOTF and Arts Commission: --**

For Your Information: Following up on SOTF's March 7, 2012 finding of violations on Library Users Association Complaint # 12001 concerning unlawful redaction of speaker card information by the Arts Commission:

LIBRARY USERS ASSOCIATION HAS HEARD NOTHING AND SEEN NOTHING FROM THE ARTS COMMISSION REGARDING THIS MATTER. Consequently we believe the Arts Commission to be in continuing violation of the law, despite the Order Of Determination document, which is dated April 5, 2012 and was presumably sent to all parties.

FYI, We also alerted the SOTF Administrator about this by telephone yesterday.

Sincerely yours,

Peter Warfield

Executive Director

Library Users Association

415/7-53-2-1-8-0

5/15/2012



## SAN FRANCISCO ARTS COMMISSION

EDWIN M. LEE  
MAYOR

TOM DeCAIGNY  
DIRECTOR OF  
CULTURAL AFFAIRS

## PROGRAMS

CIVIC ART COLLECTION  
CIVIC DESIGN REVIEW  
COMMUNITY ARTS  
& EDUCATION  
CULTURAL EQUITY GRANTS  
PUBLIC ART  
STREET ARTISTS LICENSING

ARTS COMMISSION GALLERY  
401 VAN NESS AVENUE  
415.254.6080  
WWW.SFARTSCOMMISSION.ORG

February 6, 2012

Honorable Members  
Sunshine Task Force  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102

Re: Sunshine Complaint #12001  
Library Users Association v. Arts Commission

Dear Honorable Members of the Sunshine Task Force:

I am writing in response to complaint #12001, submitted on January 13, 2012 by Library Users Association, and received by our office on January 27, 2012.

The complaint says the following:

"Library Users Association requested Speaker Cards for specific Arts Commission meetings in Fall, 2009 and in Fall, 2011 and received the following: 1- No speaker cards for 2009. 2-Speaker cards for requested meetings in 2011 were sent electronically with no indication that there were redactions; many just had a blank in the space provided for contact information. When we insisted on reviewing the original documents at the office, and not just the photocopies we were offered, we found white pieces of paper pasted over perhaps half of the cards where contact information had been provided by the speakers. There was no explanation in the written material provided to us. Only when we asked about the originals being redacted were we told that these were [supposedly] confidential personal addresses, but without any citation of statutory authority."

On December 15, 2011, Mr. Peter Warfield of Library Users Association submitted an e-mail request for the following:

1. Filled-out Speaker cards for the (a) Arts Commission meetings, and (b) Visual Arts Committee meetings of September, October, and November of 2009 (two years ago).

2. Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received, thank you) and Visual Arts Committee meetings of August 17, 2011 through the present."



CITY AND COUNTY OF  
SAN FRANCISCO

Sunshine Task Force re: Sunshine Complaint #12001  
Library Users Association v. Arts Commission

February 6, 2012  
Page 2

On December 19, 2011, I replied to his request by e-mail with the explanation that there were no speaker cards responsive to his request number 1; and I supplied pdf copies of speaker cards for the following meetings in response to his request number 2:

full Commission September 12, 2011  
full Commission November 16, 2011  
Visual Arts Committee August 17, 2011  
Visual Arts Committee October 19, 2011

I further explained that there were no cards for any of the other meetings he had requested. To protect the individuals' right to privacy under the California Constitution, Article I, Section 1, I blocked out any personal addresses (but not business addresses) that had been written on the above cards before making pdf files and photocopies. I also advised Mr. Warfield that paper copies of the same documents were at our front desk for him to pick up at his convenience.

For your convenience, we are enclosing a copy of the e-mail messages referred to above.

Finally, please be advised that the Arts Commission has revised the design of its speaker cards to remove the line for the speaker's address.

Very truly yours,

Sharon Page Ritchie  
Commission Secretary

spr

cc: Tom DeCaigny, Director of Cultural Affairs

Encl: E-mail from Library Users Association, December 15, 2011 and reply from  
Sharon Page Ritchie, San Francisco Arts Commission, December 19, 2011

**Page Ritchie, Sharon**

---

**From:** Page\_Ritchie, Sharon  
**Sent:** Monday, December 19, 2011 11:37 AM  
**To:** 'libraryusers2004@yahoo.com'; Beltran, JD  
**Cc:** Krell, Rebekah  
**Subject:** RE: Immediate Disclosure Request - Speaker Cards, additional dates  
**Attachments:** September\_12\_2011\_comment\_cards.pdf, VAC Public Comment Cards Aug-Dec 2011.pdf, November\_16\_2011\_comment\_cards.pdf

In response to your request below, there are no speaker cards responsive to your request number 1 below.

In response to your request number 2 below, I am attaching copies of speaker cards for the following meetings:  
 full Commission September 12, 2011  
 full Commission November 16, 2011  
 Visual Arts Committee August 17, 2011  
 Visual Arts Committee October 19, 2011

There are no speaker cards for any of the other meetings you have requested.

Hard copies of these cards are waiting for you at the front desk of the Arts Commission office. You may pick them up at your convenience during regular business hours.

In response to your voicemail this morning, requesting times to listen to recordings of meetings (copies of which have been supplied to you), available times are today, Monday, December 19 from 2:30 to 3:30, or tomorrow, Tuesday, December 20 from 2:30 to 3:30. Please let me know when you expect to come in.

Please note that the Arts Commission offices will be closed during the entire week of December 26 and the City holiday of Monday, January 2, 2012.

Sharon Page Ritchie  
 Commission Secretary  
 San Francisco Arts Commission  
 415/252-2591

Website: <http://www.sfartscommission.org>  
 e-newsletter: <http://sfartscommission.org/newsletter>  
 Twitter: <http://www.twitter.com/SFAC>  
 Facebook: <http://www.facebook.com/sfartscommission>  
 YouTube: <http://www.youtube.com/ArtsCommission>  
 Flickr: <http://www.flickr.com/photos/sfac>

**From:** Library Users Association [mailto:libraryusers2004@yahoo.com]  
**Sent:** Thursday, December 15, 2011 3:48 PM  
**To:** Beltran, JD  
**Cc:** Page\_Ritchie, Sharon  
**Subject:** Immediate Disclosure Request - Speaker Cards, additional dates

Dear Ms. Beltran:

A. Library Users Association would like to inspect, at your offices, the following:

1. Filled-out Speaker cards for the (a) Arts Commission meetings, and (b) Visual Arts Committee meetings of September,

October, and November of 2009 (two years ago).

2. Speaker cards for Arts Commission meetings, September 2011 through December 4, 2011 (December 5 and 12, 2011 already received, thank you) and Visual Arts Committee meetings of August 17, 2011 through the present.

If there are no speaker cards for a particular date, please provide a blank speaker card for that date.

Please provide these on a rolling basis, if necessary.

B. We would also like to receive these electronically as well.

Please note that a few of the speaker card copies recently supplied for December 5 and 12, 2011 are difficult or impossible to read, so we would like to see the originals of those, as well as the ones above, at a future visit to the department.

Thank you for your attention to this.

Sincerely,

Peter Warfield  
Executive Director  
Library Users Association  
415/753-2180



Sunshine Complaint  
complaints

to:

sotf

01/13/2012 08:58 AM

Hide Details

From: <complaints@sfgov.org>

To: <sotf@sfgov.org>

To:sotf@sfgov.org

Email:complaints@sfgov.org

DEPARTMENT:Arts Commission

CONTACTED:

PUBLIC\_RECORDS\_VIOLATION:Yes

PUBLIC\_MEETING\_VIOLATION:No

MEETING\_DATE:

SECTIONS\_VIOLATED:

DESCRIPTION:Library Users Association requested Speaker Cards for specific Arts Commission meetings in Fall, 2009 and in Fall, 2011 and received the following: 1- No speaker cards for 2009. 2- Speaker cards for requested meetings in 2011 were sent electronically with no indication that there were redactions; many just had a blank in the space provided for contact information. When we insisted on reviewing the original documents at the office, and not just the photocopies we were offered, we found white pieces of paper pasted over perhaps half of the cards where contact information had been provided by the speakers. There was no explanation in the written material provided to us. Only when we asked about the originals being redacted were we told that these were [supposedly] confidential personal addresses, but without any citation of statutory authority.

HEARING:Yes

PRE-HEARING:No

DATE:1/13/2012

NAME:Library Users Association

ADDRESS:

CITY:

ZIP:

PHONE:753-2180

CONTACT\_EMAIL:libraryusers2004@yahoo.com

ANONYMOUS:

CONFIDENTIALITY\_REQUESTED:No



Today's Agenda -- #12001 -- Arts Commission has sent nothing regarding Follow-up on Order of Determination

Patterson, Kate

to:

libraryusers2004@yahoo.com

05/16/2012 02:02 PM

Cc:

SOTF, "Page\_Ritchie, Sharon", "DeCaigny, Tom"

Show Details

Dear Mr. Warfield,

As I stated yesterday, we apologize for not responding to you sooner regarding this matter. Our City Attorney is in the process of reviewing our official response to the Written Order of Determination from April 5, 2012. As soon as I have the final draft I will forward it to you and the members of the Sunshine Ordinance Task Force.

Thank you for your patience.

Sincerely,

Kate Patterson

Public Relations Manager

San Francisco Arts Commission

25 Van Ness Avenue, Suite 345

San Francisco, CA 94102

T: 415-252-4638

F: 415-252-2595

[Website](#) | [e-Newsletter](#) | [Twitter](#) | [Facebook](#) | [YouTube](#) | [Flickr](#)

From: Library Users Association <libraryusers2004@yahoo.com>

Date: May 15, 2012 10:23:36 AM PDT

To: SOTF <sotf@sfgov.org>

Cc: "Page\_Ritchie, Sharon" <sharon.page\_ritchie@sfgov.org>, "DeCaigny, Tom"

<tom.decaigny@sfgov.org>, "Beltran, JD" <jd.beltran@sfgov.org>

Subject: Today's Agenda -- #12001 -- Arts Commission has sent nothing regarding

Follow-up on Order of Determination

Reply-To: "libraryusers2004@yahoo.com" <libraryusers2004@yahoo.com>

SOTF Administrator: Please forward to each SOTF member, including particularly the Compliance and Amendment Committee members, and copy us when you do so.

Thank you.

Dear SOTF and Arts Commission: --

For Your Information: Following up on SOTF's March 7, 2012 finding of violations on Library Users Association Complaint # 12001 concerning unlawful redaction of speaker card information by the Arts Commission:

LIBRARY USERS ASSOCIATION HAS HEARD NOTHING AND SEEN NOTHING FROM THE ARTS COMMISSION REGARDING THIS MATTER. Consequently we

5/17/2012



believe the Arts Commission to be in continuing violation of the law, despite the Order Of Determination document, which is dated April 5, 2012 and was presumably sent to all parties.

FYI, We also alerted the SOTF Administrator about this by telephone yesterday.

Sincerely yours,

Peter Warfield  
Executive Director  
Library Users Association  
415/753-2180

5/17/2012

000038

March 07, 2012 - Draft  
Select Language ▼

SUNSHINE ORDINANCE TASK FORCE  
CITY AND COUNTY OF SAN FRANCISCO  
Draft MINUTES

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

March 7, 2012 – 5:00 PM

Rescheduled Meeting

Members: Chair Hope Johnson, Vice-Chair Bruce Wolfe,  
David Snyder, Richard Knee, Sue Cauthen, Suzanne Manneh,  
Allyson Washburn, Jay Costa, Hanley Chan, Jackson West

1. Call to Order, Roll Call, and Agenda Changes. (00:00:01 – 00:04:47)

The meeting was called to order at 5:17 p.m. Vice Chair Wolfe, Members Cauthen, Costa, and Chan were noted absent. There was a quorum. Member Costa was noted present at 5:40 p.m.

Member Knee, seconded by Member Washburn, moved to EXCUSE Vice Chair Wolfe and Member Chan.

Public comment: Jason Grant Garza spoke against the motion. Patrick Monette Shaw spoke in support of the motion.

The motion PASSED without objection.

2. Discussion of Survey of Costs of Compliance with City Sunshine Ordinance (00:24:33 – 1:27:06)

Task Force members discussed the Controller's survey of City agencies and departments, requested by Supervisor Scott Wiener, of costs of compliance with San Francisco's Sunshine Ordinance.

Member Washburn, seconded by Member Knee, moved that the Chair send a letter to Supervisor Wiener, on behalf of the Task Force, acknowledging the survey, expressing concern with the secrecy of the survey request, requesting clarification of motive and expected benefits, expressing concern with the survey instrument, offering input, and inviting Supervisor Wiener to attend a meeting to discuss the survey.

Public comment: Patrick Monette-Shaw; Thomas Picarello; Ray Hartz, Director, San Francisco Open Government; Peter Warfield, Executive Director, Library Users Association; and Hal Smith spoke in support of the motion.

The motion PASSED by the following vote:

Ayes: 7 - Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Absent: 1 - Cauthen

Excused: 2 - Chan, Wolfe

3. File No. 11090: Determination of jurisdiction on complaint filed by Patrick Monette-Shaw against the Controller's Office for not providing data in a requested format. (1:31:16 – 1:31:47)

Member Knee, seconded by Member Washburn, moved to find jurisdiction.

There were no speakers. The motion PASSED without objection.

4. File No. 11090: Hearing on complaint filed by Patrick Monette-Shaw against the Controller's Office for not providing data in a requested format. (1:31:48 - 2:49:10)

Complainant Patrick Monette-Shaw provided an overview of the complaint and requested the Task Force find violation. No speakers offered facts and evidence in support of complainant. Respondent Monique Zmuda, Deputy Controller, provided an overview of the Controller's response and requested the Task Force dismiss the complaint. No speakers offered facts and evidence in support of respondent. A question and answer period followed. Respondent did not provide a rebuttal. Complainant provided a rebuttal and again requested the Task Force to find violation.

Respondent stated the data requested by complainant existed in raw form and would require many hours to generate accurately in report form. The parties agreed to work to resolve the request with alternate data.

Member Snyder, seconded by Member Washburn, moved to CONTINUE THE MATTER TO THE CALL OF THE CHAIR.

Public comment: Ray Hartz, Jr., San Francisco Open Government, asked if program used to provide information to San Francisco Chronicle columnists Matier and Ross was still available. Peter Warfield inquired as to the purpose for the postponement of the item and for what result.

The motion PASSED by the following vote:

Ayes: 7 - Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Absent: 1 - Cauthen

Excused: 2 - Chan, Wolfe

RECESS

The Task Force reconvened at 8:19 p.m.

5. File No. 11095: Determination of jurisdiction on complaint filed by Arnita Bowman against the Recreation and Park Department for allegedly not providing requested documents. (00:04:48 - 00:06:20)

Complainant sent notice she would not be able to attend the hearing.

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the Task Force's regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

6. File No. 11095: Hearing on complaint filed by Arnita Bowman against the Recreation and Park Department for allegedly not providing requested documents. (00:04:48 - 00:06:20)

Complainant sent notice she would not be able to attend the hearing.

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

7. File No. 11096: Determination of jurisdiction on complaint filed by Arnita Bowman against the Department of Parks and Recreation for allegedly not providing requested documents and delayed response. (00:04:48 - 00:06:20)

Complainant sent notice she would not be able to attend the hearing.

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

8. File No. 11096: Hearing on complaint filed by Arnita Bowman against the Department of Parks and Recreation for

allegedly not providing requested documents and delayed response. (00:04:48 – 00:06:20)

Complainant sent notice she would not be able to attend the hearing.

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

9. File No. 11097: Determination of jurisdiction on complaint filed by Charles Pitts against the Police Department for allegedly not providing requested information. (Discussion and Action) (00:06:20 – 00:08:52)

Complainant requested a continuance.

Member Washburn, seconded by Member Knee, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

10. File No. 11097: Hearing on complaint filed by Charles Pitts against the Police Department for allegedly not providing requested information. (00:06:20 – 00:08:52)

Complainant requested a continuance.

Member Washburn, seconded by Member Knee, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

11. File No. 11098: Determination of jurisdiction on complaint filed by Ray Hartz, Jr. against Luis Herrera, City Librarian, for allegedly not including a brief written summary of his comments in meeting minutes. (3:06 – 3:08)

Member Knee, seconded by Member Washburn, moved to find jurisdiction.

There were no speakers. The motion PASSED without objection.

12. File No. 11098: Hearing on complaint filed by Ray Hartz, Jr. against Luis Herrera, City Librarian, for allegedly not including a brief written summary of his comments in meeting minutes. (3:08 – 4:07)

Complainant Ray Hartz, Jr. provided an overview of the complaint and requested the Task Force find violation. No speakers offered facts and evidence in support of complainant. Respondent was not present. No speakers offered facts and evidence in support of respondent. A question and answer period followed. Deputy City Attorney Michael Karns responded to questions from Task Force members. Complainant provided a rebuttal and again requested the Task Force to find violation.

Member Washburn, seconded by Member Knee, moved (1) to find Luis Herrera in violation of Sunshine Ordinance Sections 67.16 and 67.21(e) for failure to include the 150-word summary of the Complainants's comments in the Library Commission meeting minutes and the Respondent's failure to appear at this hearing, and (2) refer the matter to Compliance and Amendments Committee.

Public comment: Peter Warfield, Executive Director, Library Users Association, said the Task Force should find that the Respondent committed a willful violation.

The motion PASSED by the following vote:

Ayes: 7 - Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Absent: 1 - Cauthen

Excused: 2 - Chan, Wolfe

ORDERED DETERMINED and REFERRED TO COMPLIANCE AND AMENDMENTS.

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RECESS

The Task Force reconvened at 9:25 p.m.

13. File No. 12001: Determination of jurisdiction on complaint filed by the Library Users Association against the Arts Commission for allegedly redacting requested speaker cards information. (4:12 - 4:13)

Member Knee, seconded by Member Manneh, moved to find jurisdiction.

There were no speakers. The motion PASSED without objection.

14. File No. 12001: Hearing on complaint filed by the Library Users Association against the Arts Commission for allegedly redacting requested speaker cards information. (4:13 - 5:17)

Complainant Peter Warfield, Executive Director, Library Users Association, provided an overview of the complaint and requested the Task Force find violation. No speakers offered facts and evidence in support of complainant. Respondent Kate Patterson, Public Relations Director, Arts Commission, provided an overview of the Arts Commission response and requested the Task Force dismiss the complaint. No speakers offered facts and evidence in support of respondent. A question and answer period followed. Respondent provided a rebuttal and again requested the Task Force dismiss the complaint. Complainant provided a rebuttal and again requested the Task Force find violation.

Member Washburn, seconded by Member Manneh, moved (1) to find the Arts Commission in violation of Sunshine Ordinance Sections 67.25(a) for failure to respond in a timely manner, 67.26 for failure to keep withholding to a minimum by providing unredacted speaker cards, and 67.27 for failure to justify withholding the redacted information; and (2) to refer the matter to Compliance and Amendments Committee.

The motion PASSED by the following vote:

Ayes: 7 - Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Absent: 1 - Cauthen

Excused: 2 - Chan, Wolfe

ORDERED DETERMINED and REFERRED TO COMPLIANCE AND AMENDMENTS.

15. File No. 12002: Determination of jurisdiction on complaint filed by the Library Users Association against the Arts Commission for allegedly routinely asking members of the public to fill out speaker cards if they wish to speak, reinforcing the impression that they are required to do so. (5:17 - 5:18)

Member Knee, seconded by Member Manneh, moved to find jurisdiction.

There were no speakers. The motion PASSED without objection.

16. File No. 12002: Hearing on complaint filed by the Library Users Association against the Arts Commission for allegedly routinely asking members of the public to fill out speaker cards if they wish to speak, reinforcing the impression that they are required to do so. (5:18 - 5:42)

Complainant Peter Warfield, Executive Director, Library Users Association, provided an overview of the complaint and requested the Task Force to find violation. No speakers offered facts and evidence in support of complainant. Respondent Kate Patterson, Public Relations Director, Arts Commission, provided an overview of the Agency's defense and requested the Task Force to dismiss the complaint. No speakers offered facts and evidence in support of respondent. A question and answer period followed. Respondent provided a rebuttal and again requested the Task Force dismiss the complaint. Complainant provided a rebuttal and again requested the Task Force find violation.

Respondent provided documentation demonstrating the Arts Commission has revised the language on its speaker cards to notify members of the public they are not required to submit speaker cards in order to speak at meetings.

Due to lack of a motion, the Task Force FOUND NO VIOLATION. MATTER IS CONCLUDED.

17. File No. 12003: Determination of jurisdiction on complaint filed by the Library Users Association against the Arts Commission for allegedly not allowing provisions for general public comment about the Bernal Heights Branch Library's historic multi-cultural Victor Jara Mural destruction and replacement. (5:43 – 5:44)

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

18. File No. 12003: Hearing on complaint filed by the Library Users Association against the Arts Commission for allegedly not allowing provisions for general public comment about the Bernal Heights Branch Library's historic multi-cultural Victor Jara Mural destruction and replacement. (5:43 – 5:44)

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

19. General Public Comment: (00:10:07 – 00:24:32 and 1:27:07 – 1:30:53)

A member of the public expressed concerns about the Library Commission splitting off 150-word comment summaries from their minutes. Patrick Monette-Shaw expressed concerns about his complaint pending at the Ethics Commission. Peter Warfield, Executive Director, Library Users Association, thanked the Task Force for changing the Task Force meeting day to Wednesday, and expressed concerns about the Library. Jason Grant Garza expressed concerns about what he termed lack of progress in handling complaints he has filed. Thomas Picarello expressed concerns about Jason Grant Garza's complaints, and suggested that Task Force meetings commence at 5:00 p.m. Ray Hartz, Jr. expressed various concerns.

20. Administrator's Report (5:44 – 5:45)

The Administrator's Report was reviewed.

Public comment: Peter Warfield suggested that more information be listed in the compliant log.

21. Announcements, Comments, Questions, and Future Agenda Items (5:45 – 5:46)

There were none.

22. ADJOURNMENT (5:46 – 5:47)

Member Knee, seconded by Member Manneh, moved to ADJOURN.

There were no speakers. The motion PASSED without objection.

There being no further business, the Task Force adjourned at 11:00 p.m.

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