



# San Francisco Ethics Commission

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**Date:** July 7, 2025

**To:** Members of the Ethics Commission

**From:** Olabisi Matthews, Director of Enforcement

**Re:** **Agenda Item 4: Update to Memo: Show Cause Hearing: *In the Matter of Matthew Lotocki v. San Francisco Police Department* (File #24021)**

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## Background

On May 2, 2025, the Sunshine Ordinance Task Force (SOTF) referred File #24021 to the Ethics Commission for enforcement proceedings under section 67.35(d)<sup>1</sup> of the Administrative Code, citing the San Francisco Police Department's (SFPD) failure to comply with a SOTF Order of Determination.

Under Section 10(B) of the current<sup>2</sup> [Enforcement Regulations](#) as adopted by the Ethics Commission, the Commission is required to schedule a Show Cause Hearing upon receiving such a referral, providing at least 15 calendar days' notice to the parties involved. Notices were issued on May 27, 2025, to the Petitioner, Mr. Matthew Lotocki, and Respondents, SFPD Chief William Scott and Lt. Jonathan Ozol, who was also named in the referral.

On June 13, 2025, after both parties presented their case, and following discussions, the Commission deferred action on this matter to the July meeting, requesting that the City Attorney provide advice on the question of whether the Commission can issue a finding on a failure to comply with an Order of Determination by SOTF or whether the Commission's scope of authority is limited to a failure to comply with a request for public records.

This memo has been updated below to address the Commission's inquiry and further clarify the Enforcement Division's recommendation regarding this matter.

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<sup>1</sup> Section 67.5(d) of the Administrative Code states: "Any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement is not taken by a City or State official 40 days after a complaint is filed."

<sup>2</sup> The Enforcement Division is in the process of reviewing the Enforcement Regulations and will present recommendations to members of the Commission for discussion and possible action, including recommendations that may impact the current provisions of section 10(B) relating to referrals from SOTF.



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### Deliberations and Findings

Per the Enforcement Regulations, the Commission will conduct its deliberations in public, with opportunity for public comment as required by the Sunshine Ordinance and the Brown Act. Any enforcement decision must be based on the entire record of the proceedings, supported by findings of facts and conclusions of law.

Section 10(B)(1)(v) of the Enforcement Regulations permits the Commission to issue cease-and-desist orders or recommend removal of officials where the Commission determines on the basis of substantial evidence presented at a hearing that a violation of the Sunshine Ordinance has occurred. However, the Commission may not impose administrative penalties for any alleged violations of the Sunshine Ordinance, whether they are willful or otherwise.

### Legislative Framework

#### ***Failure to Comply with an Order of Determination Issued by SOTF***

The Administrative Code gives SOTF the authority to conduct hearings regarding a records request denial. See S.F. Admin Code § 67.21.

Section 67.21(e) of the Administrative Code provides that if a public records custodian fails to respond properly to a request, or if a previous petition is denied or ignored, the requester may petition SOTF to determine whether the record is public. SOTF must then issue a determination within 45 days of receiving the petition. If it finds the record is public, it will order the custodian to comply. If the custodian does not comply within 5 days, SOTF will notify the District Attorney or Attorney General for enforcement. S.F. Admin Code § 67.21(e).

The Administrative Code further states, "If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, **the superior court shall have jurisdiction to order compliance.**" S.F. Admin Code § 67.21(f).

#### ***Enforcement Authority of the Ethics Commission under the Sunshine Ordinance***

While Section 10(B) creates an avenue for matters to be brought before the Commission for a Show Cause Hearing if a City officer or employee fails to comply with an Order of Determination by SOTF or Supervisor of Records, the Commission's enforcement powers regarding such referrals



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are limited by the Charter and Administrative Code. Specifically, Section 67.34 authorizes the Commission to act only on *willful* violations of the Sunshine Ordinance by elected officials or department heads.

Specifically, [Section 67.34](#) provides that the willful failure of “an elected official, department head, or other managerial city employee to discharge the duties imposed by the Sunshine Ordinance, the Brown Act, or the Public Records Act shall be deemed official misconduct . . .” This provision further states that “complaints involving allegations of *willful violations* of this ordinance . . . by *elected officials or department heads* . . . shall be handled by the Ethics Commission.” See S.F. Admin Code § 67.34 (emphasis added).

The current referral does not allege a willful violation by an official within the Commission’s enforcement jurisdiction.

Further, the alleged violation at issue involves a department’s failure to comply with an Order of Determination issued by SOTF—not an allegation of a willful violation of law by an elected official or department head to comply with a records request.

As stated above, under Section 67.21 of the Administrative Code, the Superior Court has jurisdiction and authority to order compliance for failure to comply with an Order by SOTF. See S.F. Admin Code § 67.21. Additionally, Section 67.35 provides that anyone “may institute proceedings for injunctive relief, declaratory relief, or writ of mandate [and penalties] in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this Ordinance.”

### Recommendation

Section 10(B)(1)(v) of the Enforcement Regulations permits the Commission to issue cease-and-desist orders or recommend removal of officials where the Commission determines on the basis of substantial evidence presented at a hearing that a violation of the Sunshine Ordinance has occurred. However, the Commission may not impose administrative penalties for any alleged violations of the Sunshine Ordinance, whether they are willful or otherwise.

The Enforcement Division recommends that the Commission take no action regarding this referral. The Administrative Code provides a clear remedy for such failure: “**the superior court shall have jurisdiction to order compliance.**” Petitioner may seek relief, including penalties by instituting proceedings at the superior court.



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Furthermore, there is no evidence of a willful violation by an elected official or department head. SOTF has provided no evidence that Chief Scott willfully violated the Sunshine Ordinance. Even if such a violation occurred, the Commission is not empowered to impose administrative penalties or compel the Respondent to comply with SOTF's Order of Determination.

During the June meeting, Petitioner Lotocki testified that he plans to bring this matter before the Superior Court to seek redress. This Commission should, therefore, defer any action on this matter to the Superior Court, as the Commission has no authority to enforce against the underlying allegation.

The Enforcement Division has proposed amendments to the provisions of the Enforcement Regulations that address referral from SOTF. These proposed amendments, which include a broader explanation of the Commission's enforcement authority, are presented under Agenda Item 6.