



## Railroded Out of Town by the Sunshine Ordinance Task Force Compliance and Amendment Committee

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This article is a continuation of the story “**Public Records and a Side of Fries**”<https://westsideobserver.com/23/5-Can-the-Sunshine-Task-Force-enforce-the-sunshine-laws.php> These articles are to give the public an inside look at what happens when you try to hold government accountable and the state of government transparency in San Francisco. It is a big problem in San Francisco.

I file 5 additional complaints against the Department of Public Works, Mr. Steinberg post the Sunshine Ordinance Task Force (SOTF) of finding him in violation of the Sunshine Ordinance by not making records public. Mr. Steinberg continued to delay and obstruct.

We will focus on two complaints since this story is more about what the SOTF Compliance and Amendment Committee did once they received the complaints. One of the primary responsibilities of SOTF Compliance and Amendment Committee is to make sure that government officials comply with the Sunshine Ordinance and other public access laws after the

full SOTF has found them in violation. If they find continued violations, they are to move it to the full SOTF for possible further actions. Once records are determined to be public by order of SOTF, the custodian of records is to make them public in 5 days. This is a “**shall**” requirement stated in the *Sunshine Ordinance § 67.21 (e)*.

Mr. Steinberg did not start producing records until 30 days after the SOTF order violating *Sunshine Ordinance § 67.21 (e)*. After the SOTF order of determination, Mr. Steinberg stated there were 8,586 responsive records found. In the end, Mr. Steinberg produced 1886 records, including 234 commercial ads, and after a year from the original request produced only 4 records that were responsive to the record request. This violates *Sunshine Ordinance § 67.25 (d)* which states that records are to be “**responsive records**” to a request. I used this provision to make my record request because it uses the words “responsive records” that other provisions do not. All the above violates the *California Public Record Act (CPRA) § 6253 (d)* which does not allow government officials “**to delay or obstruct**”.

I think the above are serious violations of government transparency laws. Just as serious as a government official withholding records or not producing records within 10 days of a record request or 14 days if an extension is determined. SOTF takes these initial violations seriously. SOTF does not take continued delay and obstruction seriously to the point many people never get the records they request or have to wait a year as I did. Here is one such story.

I submitted all complaints and supporting documents at least 2 weeks before my hearing.

A person making a complaint can only see the hearing documentation called “packets” or “attachments” 3 business days before a hearing. I realized shortly before the hearing 2 records were missing from the hearing packets. The most important were complaints about the 30 days of additional delay before starting to get records, the 1882 non-responsive records, examples of 237 commercial advertisements received, and other violations as I have outlined above.

The first item of the SOTF Compliance and Amendment Committee (SOTF CAC) agenda is 1. “Call to Order, Roll Call, and Agenda Changes”. I attempted to make a public comment and alert them that there were records and complaints missing and their importance. The committee did not ask for public comment on agenda item 1. The hearing was being conducted online. The clerk recognized me for public comment on agenda item 2 and noted to the committee that I had attempted to make public comment on item 1. After I made my comments, SOTF CAC Chair LaHood stated that she could understand my confusion about the SOTF CAC not having a public comment on item 1. She stated a public comment period was not required on agenda item 1 Call to Order, Roll Call, and Agenda Changes. It was not a time to point out missing documents in agenda item packets. This is not true.

**SOTF Bylaws Sections 5 and 11** require a public comment period on each agenda item, which echos *Sunshine Ordinance § 67.16*. If evidence or complaints are missing that may necessitate an agenda change, when is the proper time to note this other than agenda item 1 which includes “Agenda Changes” in its title? That question was never answered. Clearly, though, SOTF CAC Chair LaHood was the person confused and did not know the SOTF bylaws and Sunshine Ordinance she was supposed to follow.

After my notifying of missing documents, Chair LaHood said: “One of our committee members will be leading those two cases and we'll have a chance to discuss if there are any issues with what was included in the packet and whether we are able to proceed with our discussion today so we will get to those later.” Now to me, “we” and whether “to proceed with our discussion” was referring to the committee members and that they would take the lead. After all, they were in charge of the meeting. This was fine with me, but it didn't happen.

I had two hearings scheduled, one after another, both with missing documents. Not at any point was there a discussion about the missing documents. Petitioner has only a limited amount of time to make their opening comments. So, I spent most of my time trying to make my case. At the second hearing realizing there would not be any discussion of missing complaint and evidence documents, I again mentioned that key documents were missing. You can only spend so much time repeating yourself and they had acknowledged prior that they understood. It ended up they had a different agenda and the missing documents and complaints did not matter to them. They didn't care.

Mr. Steinberg's explanation of why he did not comply with SOTF's order of determination in 5 days but took 30 days to start producing records was he was working on it during that time. “Again, if the point of this hearing is to, determine if I've complied with the order determination, I would just say first of all, Mr. Sullivan's wrong, in saying that I didn't work on the request for three weeks after the hearing. I worked on it a lot and you can see you go to NextRequest, or I can print out for you all the back and forth with him on, what I had my, IT team do multiple email searches that was working on the request. I didn't start releasing things until November 30th. That's correct because I was trying to come up with reasonable search terms that I could get him documents he actually wants.”

**Sunshine Ordinance § 67.21 (e)** “Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general.”

The law does not state 30 days to work on it and produce “documents he actually wants”, like 237 ads and 1645 other irrelevant records. Violating **Sunshine Ordinance § 67.21 (e)** did not seem to matter to the committee.

I stated he looked at every record to redact information so he could easily see responsive and non-responsive records like ads. When Chair LaHood asked Mr. Steinberg about the ratio of responsive records to non-responsive records. He responded, “I don't know how many there were advertisements and stuff, but it really doesn't take a lot more time, than sending it to him, versus moving it into the queue that says non-responsive. I have to look at it in order to determine whether it's, it's a letter, or it's an advertisement, or anything else. So, it's really very little time was wasted by delivering to him some of those things that he didn't want. And I understand he had to look through additional files, but in terms of time, I still had to look at them anyway. So, I don't know if that helps.”

True, no waste of time for him to send non-responsive records versus leaving them out because his goal was to delay actual responsive records. After the SOTF order of determination, he stated that there were 8,586 responsive records to my request. In the end, he only produced 1886 records. I guess at some point he determined his game of delay and obstruction was wasting his time.

Chair LaHood states: “You know, even though you're on opposite sides and we want, you know, we're trying to do our job and we're trying to help members of the public get records they're looking for and, you know, Mr. Steinberg, I think is trying to help to respond to requests and help people get the information they need. In this particular situation, maybe our committee can provide some mediation services here because I think you would both rather spend your time getting the records you need or fulfilling records requests, and getting responsive answers, and being responsive, and delivering records rather than spending more and more time. I'm in successive compliance meetings, even though I know you really like us and this is a lot of fun. I think it would be in everyone's best interest to take the situation and let's learn from it. I think based on Mr. Steinberg's recommendations, I think Mr. Sullivan is learning how to craft more concise requests in being very specific about what he does and doesn't want perhaps Mr. Steinberg can also learn from Mr. Sullivan.”

I want to point out here that SOTF's job is to apply all the Sunshine Ordinance and other public access laws. By doing so, it would result in responsive records in a timely matter. During the hearing, I pointed out that if Mr. Steinberg had produced the 4 responsive records in 10 days or less, as he is required to by law, then none of our time would be wasted. When I pointed out there were only 4 responsive records, Mr. Steinberg said, “Oh, you found four. I thought there were only two.” He knew what records were responsive and what were not. He may have been right about there only being two records, as two were just copies of the other two. He may have sent them twice.

Previously, I had heard the argument from Mr. Steinberg echoed by SOTF members about my inability to craft a more concise request, so I challenged SOTF members to make specific improvements to my original request. Chair LaHood did not make any and asked, “Let's ask Mr. Steinberg. Mr. Steinberg, Mr. Sullivan wants to work more effectively with you. What would be the best way for him to submit requests to you?”

Mr. Steinberg had no specific suggestions for making my public record request better. He was fine with the back and forth and his response. Why wouldn't he be? In his answer he stated: “The best thing that any requester can do to get what they want and get in a timely manner is to tell, you know, ideally tell you exactly what if there's a specific document. Tell me what the document is. Unfortunately, in cases like this, it's I want anything that shows or anything that is about and those are really difficult. I honestly don't. I mean, I think we really did try to do a good job of coming up with something that would find the things he was looking for. I mean, I got creative like, I mean the more information he gives me, the better.”

At the end, Chair LaHood indicated that she thought the matter should be closed, but asked me for any further thoughts and if I thought there were responsive records missing.

My response: “Yes, I am worried about this happening in the future, but I don't have any more documents that I need right at this point.”

During the public comment period, a member of the public gave an impassionate public comment: “Good evening, commissioner members. This is ..... and I would like to make a comment about when the public, the requester, asks for records and the treatment that we receive. And the timely manner, it always falls on the burden of the requester. And I find it very entitling that someone can say about your perception of how something should be worded. To look at a perception of how someone asks is, what gives you that, right? So again, really selective privileged? I can't imagine. I know it because it's happened to me. I've been sitting in these rooms for now. Let's see, Nia .... It's going on five years and still have not received my records based on what I submitted. Something is wrong. Or I did not word this correctly. Or three times, I've had to prove that something was contracted to the ... it is insane, when all the public is trying to do is to protect others. They're advocating. They're asking for preference. They're asking for proof and I don't know why it has to be so difficult and such a burden. And then on the other side, they can have loopholes. They can flood you with records. They can delay five years. The delay that you go through. What is your hope? The trauma that is caused by doing this back and forth, it's not healthy. So, I find this a violation of service by the Sunshine Ordinance Task Force that stands for us. Thank you. I yield the rest of my time.”

This individual has never gotten their records. I believe this person has given up.

The SOTF CAC moved to close my complaints without any real consideration of post SOTF order of determination complaints. There were only 3 votes.

In **San Francisco’s Administrative Code, Article IV, Section 4.104 (b)**, the city requires the commission and SOTF “*the affirmative vote of a majority of the members shall be required for the approval of any matter, except that the rules and regulations of the body may provide that, with respect to matters of procedure the body may act by the affirmative vote of a majority of the members present, so long as the members present constitute a quorum.*” This is interpreted as requiring SOTF 6-vote majority in the affirmative on substantive matters such as complaints with total members set at 11 regardless of whether all seats are appointed or members at a hearing. This is also in **SOTF’s Bylaws, Article IV, Section 7**, “*The affirmative vote of a majority of the members of the Task Force (six) shall be required for the approval of all substantive matters.*” Further, **SOTF’s Bylaws, Article VI (d) “Compliance & Amendments Committee.** *The Compliance and Amendments Committee may monitor compliance with the Orders of Determination adopted by the Task Force, monitor changes in state law and court decisions affecting access to public meetings and records, and make recommendations to the Task Force regarding amendments to the Sunshine Ordinance. In addition, the Compliance and Amendments Committee shall schedule hearings on complaints to review jurisdiction and the merits of the complaint in order to provide recommendations to the Full Task Force.*”

All this says to me, that the SOTF CAC should have fully heard my complaints and moved them on to the Full Task Force with recommendations and a vote of a majority of the Full Task Force. That closing complaints on 3 votes violates the city’s administrative code and SOTF’s own bylaws.

Two members of the SOTF CAC that participated in this hearing are still on the SOTF CAC. Chair Lila LaHood is the publisher of the San Francisco Public Press. She is on SOTF as a journalist representative. Jennifer Wong is the appointee of the League of Women Voters of San Francisco. Both, I would think, should be concerned about not only making sure records are made public but that records are given in a timely manner in accordance with the law. What good is it to journalists and the public if the government can delay and obstruct for a year or never get the records? The public cannot hold the government accountable with the current state of public access to know what the government is doing. This is part of why San Francisco has scandals.

**Sunshine Ordinance § 67.30 (c)** “The task force shall advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter.”

The Sunshine Ordinance Task Force regularly fails to enforce all provisions of the Sunshine Ordinance and to provide city departments with appropriate ways to implement all public access laws. I can't be angry about Mr. Steinberg's action regarding my public record request because he is doing what is allowed by SOTF. Laws are only good to the extent they are enforced or voluntarily adhered to. I believe, Mr. Steinberg tried as many different “delay and obstruct” moves as he could think of including what I have mentioned in this article and others like “rule of reason” and balancing test which I haven't. He was experimenting with what he could get away with, knowing that I would challenge him. He is absolutely right. He can delay and obstruct to the point that he claimed in the hearing that I was “harassing” him. It turns everything on its head that asking for public records is “harassing”. Right now with public access enforcement, the public has little right to know in a timely manner, if at all.

A kangaroo court is a judicial or quasi-judicial proceeding which disregards set procedures, disregards principles of law and justice that result in abusive or otherwise unjust adjudication. The idea of the term of “kangaroo court” probably originated from such bodies jumping around on which procedures and laws would be applied or simply making them up on the spot. The term did not originate in Australia, but here in the US. An 1841 article in *The Daily Picayune*, New Orleans, quotes another publication, the *Concordia Intelligencer*, reporting several lynchings instituted "on charges of the Kangaroo court". The *Picayune* article also asks "What is a kangaroo court?" *The Daily Picayune*. August 24, 1841. p. 2. Newspapers.com.

I have heard government officials refer to the Sunshine Ordinance Task Force (SOTF) as a Kangaroo court, but many government officials dislike the idea of sunshine and having to deal with transparency laws.

Apparently, SOTF was not always a kangaroo court. 2011 seems to be the high of SOTF fighting for the public right to know. These are all stories for another time. Laws and rights erode over time if not constantly defended, especially if the other side is powerful like the government.

*Sullivan runs the website <https://www.sfneighborhoods.net/> committed to giving power to citizens to promote transparency, democratic equality and to increase participation in their neighborhoods and government.*