



The Deck is Stacked Against the People's Right to Know

Need Help Getting a Record from City Hall?

This article is also published in the *Westside Observer*: <https://westsideobserver.com/23/3-Pitfalls-of-using-the-sunshine-task-force.php>

After Sergei Severinov and his immigrant family were harassed, intimidated, insulted with racial slurs, abused and racially profiled by San Francisco Police Department (SFPD), he filed multiple complaints with the Office of Citizens Complaints and the Department of Police Accountability over several years. Finally, fed-up with the victimization of SFPD, he decided to find out what records SFPD keeps on him and his family. He sought help from the Sunshine Ordinance Task Force (SOTF) and in particular, all records of interaction with SFPD. He believes he has the right to do so under the California Public Records Act and the San Francisco Sunshine Ordinance.

“Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people’s business. The people do not cede to these entities the right to decide what the people should know about the operations of local government. The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.” **San Francisco Sunshine Ordinance of 1999, Findings and Purpose, Administrative Code §67.**

The government is supposed to work transparently for the people, but does it? The people break even if the Task Force has all eleven of its members and follows all its procedures. Often that does not occur.

If your complaint is straightforward, you will probably do OK at SOTF, but there are many pitfalls that can turn against the complainant and favor the respondent.

[Sergei Severinov's complaint against the SF Police Department.\[File #22014\]](#)

Mr. Severinov already had a determination that the records were public. Still, the Police Dept would not release his documents. Severinov brought the complaint before the SOTF to consider enforcement fully believing he had the right to see his own records.

But the SOTF can only make determinations. It has no enforcement powers ... “the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person’s request.” Suppose the records are not released after five days. In that case, the Task Force “shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance ...”

That rarely — to the point of never — happens. Despite the SOTF’s determination that the records are public, the public may *never* see them.

[SOTF Member Schmidt moved to notify the Attorney General under §67.21\(e\); seconded by Member Stein, the vote was 5 “Ayes,” 1 “No,” and 3 “Absent.” Member Wong, who had just been there before the vote was gone, but then reappeared to vote on the next motion on the same complaint.](#)

There are two things very wrong with what happened.

You might think the motion would pass on a 5 to 1 vote, but not in San Francisco. The fat fingers of the City on the scales reverse many majority votes, u-turning victories into defeats. How does that happen?

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

Administrative Code § 4.104 Boards and Commissions-Rules and Regulations (b).

A majority of the seats that make up a board or commission are required to pass any matter, regardless of whether all seats are full of actual people and how many members are present at the meeting. SOTF is an 11-member body. Most actions require 6 “Ayes” to pass. Currently, there are 2 vacant seats on SOTF. Those seats are defacto “No” votes against the public (the complainant), favoring the respondent (the City). Absent members from a meeting are also automatic “No” votes against a complainant.

In Mr. Severinov's complaint, at the time of the vote, the quorum was at the bare minimum of 6 to hold the meeting — Mr. Severinov needed all 6 votes "Ayes" and already had 5 "No" votes against him. The single "No" vote meant he lost.

But wait, what about Member Wong, who is the San Francisco League of Women Voters representative. She was at the discussion and then disappeared during the vote — an automatic no-vote, recorded as absent. Is this allowed?

The same city code that states the majority in the affirmative rules goes on to say, "Each member present at a regular or special meeting shall vote "yes" or "no" when a question is put, unless excused from voting by a motion adopted by a majority of the members present." That is echoed in the SOTF bylaws.

Upon return, Member Wong said she had to step away from the meeting because of a business call. She was not excused "from voting by a motion adopted by a majority of the members present." If a member can leave during a vote and then return without voting on the motion but is allowed to vote on the subsequent motion on the same complaint, it seems a mockery of the shall vote "yes" or "no" rule. SOTF strictly adheres to the Administrative Code as the majority vote rule.

SOTF should have required her to vote on the motion. At the following public comment period, another member of the public and I protested, but it changed nothing. Unfortunately, these acts in favor of city officials happen frequently at SOTF.

The next motion on Mr. Severinov's complaint was to refer the complaint to SOTF's Compliance and Amendments Committee for future monitoring. Member Wong voted.

Funny thing, at the next meeting of SOTF on February 2, 2023, new SOTF member Hill asked to abstain from a vote. He was informed he had to vote "yes" or "no." No one told him he could "leave the room."

If the record request was to an elected official or department head and they fail to "discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission." (§67.34)

Rarely are complaints sent to the Ethics Commission and I know of no enforcement of public access laws by the Ethics Commission.

The San Francisco Ethics Commission

The Ethics Commission is mentioned nine times in the Sunshine Ordinance and has a role to play in upholding the ordinance, but has never done so to the knowledge of this author. The City Attorney's Office is the legal counsel for the Ethics Commission and reads Ethics and Sunshine

laws so narrowly and enforces only egregious willful misconduct of elected officials and department heads.

It is no wonder that the City finds itself in scandals where the FBI and the IRS have to come in to investigate and prosecute. When the Ethics Commission or the City Attorney's Office don't enforce misconduct, how can the public get records?

The Sunshine Ordinance Task Force

Too many people are unaware of the Sunshine Ordinance Task Force (SOTF). Its responsibility is to advise and implement “Sunshine” — Chapter 67 of the SF Administrative Code, and California state public access laws to government meetings and records. The SOTF is a policy body because it is a quasi-judicial body making determinations. Its members are volunteers composed of a lawyer, a few journalists, a consumer activist, and citizens interested in citizen access and participation in government. The members' attitude toward transparency and accountability varies, as do their understanding of the laws. Public access, due process laws, and court cases are a lot to know. The laws are not written in easy-to-understand language. They are laid out like a spaghetti fest with related things found in unexpected places.

SOTF is supposed to give members of the public a path to make records and information public or make sure public/private meetings are conducted in accordance with the law so that the public does not have to resort to the courts.

What is a Record?

City Officials often claim that records do not exist and that they do not have to create documents that do not exist. It is a common tactic to hide information from being made public.

The CPRA defines “writing.” “..any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.” [CPRA §6252 (g)]

That is a pretty expansive definition of “writing.”

In hiding information, you often have the “a” to “c” problem. Where “a” is the starting point, raw information or data, and “c” is the conclusion, but they are hiding the “b” — how you got to “c.” The how “b” is essential for accountability because city officials could make numbers up or spin conclusions in “c.”

Tuolumne River Trust v. SF Public Utilities — [File No. 22918](#)

The Tuolumne River Trust complains that SFPUC “submitted a document to the State Water Resources Control Board claiming that a requirement by the Board might lead the SFPUC to

require 75% to 90% rationing from their customers. They have made claims like this before, but once we got ahold of the numbers and calculations used to produce their results, we found major flaws in their methodology.”

"SFPUC staff have a long history of manipulating numbers and facts to build their case against contributing instream flows to the Tuolumne River for environmental purposes," the Trust maintains and provides examples in their complaint file.

The public record requested “all documents produced or used by the SFPUC to determine the rationing figures of 75% to 90% cited in CCSF’s Petition for Reconsideration.”

At first, the SFPUC claimed “attorney-client privilege,” but that justification requires that the attorney must have done the work and informed the client. That is not the case here.

Dropping “attorney-client privilege,” SFPUC gave the Trust the raw data and the concluding records but claims “no records” of calculations or methods and that they are under no obligation to create records that do not exist.

Existing or Created Records?

The agency does not have to create records that do not exist, but their claim is misused. Arguing that they put data into a computer model and it spits out the conclusions; there is no actual traditional “record” to produce. The records or information exist or they could not get from “a” to “c.”

Using CPRA definitions of “public records,” the calculations in the computer are a “form” of “representation” which includes a “combination thereof ... letters, words, ... or symbols” and “any record thereby created, regardless of the manner in which the record has been stored” and is “information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” Furthermore, the **CPRA** clarifies in **§6254.9** that the software itself is not a public record but **(d)** *“Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer. Public records stored in a computer shall be disclosed as required by this chapter.”*

On February 1, 2023, by a public vote, SOTF “orders the release of any public records or public information that would help explain the water rationing calculation numbers as requested by the Complainant.”

The SFPUC used calculations and methods but wanted to keep them private.

City officials often use this argument of creating “a record that does not exist” to keep information hidden because it works. The truth is complex and confusing, while their argument is simple. To often the SOTF gets this wrong.

When is “create a record that does not exist” valid? If the Trust had requested that SFPUC use a different date range or contributing instream flows in combinations that the SFPUC did not do,

that would create a record that did not exist. The SFPUC does not have to do research for the Tuolumne River Trust. The SFPUC creates the record when they do their research in “the conduct of the public’s business,” and all that is public record and information, even if it is merely letters, numbers, and symbols “thereby created, regardless of the manner in which the record has been stored.”

The Courts

Sunshine Ordinance §67.35 Enforcement Provisions (a) “Any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate 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”

All well and good if you have the money to take the City to court. If your case goes to court, you will face the whole City Attorney’s Office. Nobody in the City is using their money to defend the City. The City uses taxpayers' money, including the complainant’s money if they are a taxpayer in San Francisco. If you win in court or partially win, the City must pay all your legal costs.

To institute proceedings in court, you must exhaust all administrative remedies, which can take months to years at current rates.

Seeing a complaint through to the courts would take a lot of perseverance, time, and money. One remedy would be if SOTF determines in favor of the complainant and against the City, or SOTF does not make a determination in 45 days, and the Ethics Commission does not enforce a SOTF determination in 5 days, the City would pay all legal costs of a complainant filing in a court regardless of winning or losing the court case.

The Journalist - Making Bad Government Conduct Public

Justice Louis Brandeis said “Sunshine is the best disinfectant.” But while the courts can demand change, it is a slow and costly process. Since the City has stacked the deck against transparency and accountability, a faster way is to inform the citizenry of official misconduct and systemic problems and let citizens demand change. “The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.” We are not in control of our government.

To contact the Sunshine Ordinance Task Force go to sotf@sfgov.org. It meets on the first Wednesday of each month. Agendas are posted at least 72 hours before meetings <https://sfgov.org/sunshine/meetings/20>

Contact your Supervisors—demand Change.

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.