



The Ethic Commission and the City Attorney's Office interpret city administrative code for less accountability of government officials.

The San Francisco Ethics Commission should be named the Narrow Legal Commission

*This article is also published in the **Westside Observer**: <https://westsideobserver.com/23/7-Ethics-Commission-complaints-go-into-black-hole.php>*

Ethics is about concepts of right and wrong behavior which differs from legal. Legal means an act is in accordance with laws. The “Ethics” Commission legal advice is by the San Francisco Office of the City Attorneys, which interprets laws and the city’s administrative code in favor of the city and narrowly against the public. To be fair, the San Francisco Office of the City Attorney's responsibility is to represent the city government and not the public. This is at cross purposes with being a government watchdog, ethics, transparency, and accountability. If a watchdog agency investigates and finds questionable actions, those actions or inactions could end up in court. The San Francisco Office of the City Attorney's interest is to keep the city out of court. Evidence of illegal or questionable actions may never see the light of day, but internal correction may be taken and the public never sees them. I think I know of one, but it is like looking through a frosted window. Everything is fuzzy. You can’t say for sure.

San Francisco Office of the City Attorneys is supposed to keep the city on the right side of the law. Given the city's problem with scandal, I would say they are failing at it. If it was not for an outside investigative unit like the FBI, the scandals so far uncovered would probably still be happening. It is a sad joke that the San Francisco Office of the City Attorneys participated in the scandal investigation as they should have been proactive in stopping these scandals from happening.

There are several internal investigative units of the San Francisco city government, but they are after the facts. The "Ethics Commission", the Sunshine Ordinance Task Force, and some other commissions are external facing watchdog bodies that take complaints from citizens. Giving a complaint to the "Ethics" Commission is like giving a complaint to a black hole. Your complaint goes in and the chance that anything comes out is slim. This is because the San Francisco Office of the City Attorneys controls this body and has no interest in transparency. Transparency only opens the city up to accountability, legal problems, and court cases. Even if an investigation only reveals wrong behavior that still is possibly "legal", it doesn't look good.

The other problem with the lack of transparency is the public does not know if procedures and laws are being applied the same or selectively. Mayor London Breed receiving gifts from what she saw as her friend, Mohammed Nuru, probably would not have been investigated and penalized by the "Ethics" Commission if it had not been made public. I can understand Mayor Breed's confusion about a gift from a friend verse a political gift and the need to report it. Things are not transparent and procedures and laws are not followed consistently. This is why the city finds itself with unintended transgressions to major scandals.

In 2017, San Francisco Ethics Commissioner Quentin Kopp resigns saying politicians are unafraid of the agency. [*San Francisco Chronicle* "SF Ethics Commissioner Quentin Kopp resigns, says politicians unafraid of agency"](#). "I find the investigative practices of the Ethics Commission staff unsatisfactory," Kopp wrote in his resignation letter. "I have lost confidence in the ability of the Ethics Commission and its staff to achieve the purposes represented to voters and residents two decades ago for its establishment." A year prior, San Francisco Ethics Commissioner Peter Keane had resigned.

The "Ethics" Commission and the Sunshine Ordinance Task Force should have outside public counsel that would allow for more independence from the city, transparency, consistency of application of procedures and the law, and more teeth to outward watchdog bodies. This is not a new idea. The city fights this idea tooth and nail. The Sunshine Ordinance Task Force used to be more transparent. The San Francisco Office of the City Attorneys used to submit legal memorandums for each complaint that was part of the public record. The Sunshine Ordinance Task Force has legal counsel provided by the San Francisco Office of the City Attorneys that is supposedly is walled off from the San Francisco Office of the City Attorneys. This legal counsel recently has advised the task force not to make its opinions public. This happened shortly after the San Francisco Office of the City Attorneys stopped submitting memorandums. You have to wonder how much the wall exists with the Sunshine Ordinance Task Force legal counsel.

With the city in scandals, the San Francisco Office of the City Attorneys is asserting less transparency and accountability in its action.

I filed 2 complaints with the “Ethics” Commission against the Sunshine Ordinance Task Force (SOTF).

The first complaint was against SOTF Compliance and Amendment Committee for violating the Sunshine Ordinance during a hearing which is covered in the Westside Observer article [“Railroaded Out of Town”](#).

The second complaint was against the full SOTF for violating a few San Francisco Ethics Administrative codes which is covered in the Westside Observer article [“Is the Sunshine Ordinance Task Force Ethically Challenged?”](#)

I did not have high hopes.

About a month later, I got an e-mail from Ethics Commission Eric Willett, a Senior Investigator and Legal Analyst, that they had received my complaint. [After a little follow-up](#), I found they had combined my complaints into one. Not a good sign, as one was an ethics complaint against the full SOTF and the other a sunshine complaint against a SOTF committee or its chair. Next, I got an e-mail from Mr. Willet stating:

“I wondered if you could provide clarity on a couple of overarching questions that I have regarding your complaint. Specifically, what provision(s) of the Sunshine Ordinance do you allege that members of the SOTF violated in your underlying complaint against the SOTF Compliance and Amendment Committee, which SOTF members make up this committee, and what allegations comprise your original complaint to the SOTF and who did you make these allegations against?”

Please provide your answers to these questions by Friday, March 24th.”

This is kind of funny because either he has reading comprehension problems or cannot read the Ethics Commission's own complaint form, which I clearly name the committee and individuals.

2. RESPONDENT INFORMATION

Provide the name, title, affiliation (e.g. City department, campaign committee, business entity), business address, telephone number of each person who committed the alleged violation(s).

Sunshine Ordinance Task Force, Compliance and Amendments Committee
Chair Lila LaHood
Member Jennifer Wong (questionable responsibility explained in documents)

I go further in the documentation with a paragraph outlining which SOTF members make up the SOTF Compliance and Amendment Committee and what allegations are against them. Below is part of the response to him. I made it really clear.

This complaint is being filed against the SOTF Compliance and Amendment Committee (CAC), consisting of Chair Lila LaHood and Member Jennifer Wong, for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.16, SOTF Bylaws, Article IV, Section 11 by failing to take public comment on each agenda item, for allegedly violating Administrative Code (Sunshine Ordinance) Section 67.7 (b) by holding complaint hearings

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on agenda knowing that there were missing documents in the agenda packets (there are 8 other laws that could be cited), for allegedly violating SOTF By-laws, Article IV, Section 7, By-laws Article VI, Section 1 (d), SOTF Public Complaint Procedures C, 1, 3) and AC § 4.104 (b) by closing complaints on a 3 member vote and not forwarding them to the full SOTF for the affirmative vote of a majority of the members shall be required for the approval of any matter, except that the rules and regulations of the body may provide that, with respect to matters of procedure the body may act by the affirmative vote of a majority of the members present, so long as the members present constitute a quorum, for allegedly violating Administrative Code (Sunshine Ordinance) Sec. 67.30 (c) by failing to advise City departments on appropriate ways in which to implement the San Francisco Sunshine Ordinance, and Administrative Code (Sunshine Ordinance) Sec. 67.1 (g) “However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process”, at their August 23, 2022 meeting.

SOTF CAC Member Jennifer Wong is also Vice Chair of the full SOTF. What requirements of Member Wong to intervene when the California Public Records Act, The Brown Act, SOTF Bylaws, SOTF Procedures, and San Francisco Administrative Code are not being followed in a body in which she sits as a member is unknown to this petitioner. This complaint may be only against SOTF Compliance and Amendment Committee Chair Lila Hood.

It should be noted that while the e-mail came from Eric Willet, the inquiry behind his e-mail could have come from the City Attorneys Office as part of the investigative process. **San Francisco AC C3.699-13 (a)** “*Within ten working days, after receipt of the complaint or information, the district attorney and City attorney shall inform the commission in writing regarding whether the district attorney or City attorney has initiated or intends to pursue an investigation of the matter.*”

The original SOTF complaint also included violations of SOTF By-laws and complaint procedures which are in the purview SOTF, but not the Ethics Commission. The violations of SOTF By-laws and complaint procedures was included in the Ethics Commission complaint for completeness. They got everything that SOTF did.

The e-mail from Eric Willet may have been to set a deadline, hoping I would not respond. Then they could dismiss my complaints based on my not responding and not have to deal with the allegations. Or it could have been both that and they couldn't read. You can read my full response [here](#). I went over my original complaint to the Ethics Commission trying to over-explain every point because if they have to ask "which SOTF members make up this committee"? I had little confidence that they understood anything else and needed a lot of hand-holding. Senior Investigator and Legal Analyst?

I had sent the Ethic Commission everything that SOTF had 270 plus pages. One problem that works against petitioners is that the complaint document file gets bigger and bigger as time drags out. Especially when the origin of the complaint is a government official using every trick, they can to delay and obstruct giving requested records and piling on junk records. This makes it harder for future investigators and costs of lawyers if needed.

About a month later, I got the [dismissal notice after Ethics Commission preliminary review](#). The important statement: "The Ethics Commission has dismissed the complaint's allegations pursuant to Enforcement Regulations section 4 because the conduct alleged does not fall within the jurisdiction of the Ethics Commission for enforcement and credible evidence refutes the allegation."

Picking up on this sentence, I did a public record request about jurisdiction and "credible evidence refutes the allegation." The record request can be found [here](#) at the bottom of this email chain with their response at the top.

The Legal Merry Go Round that is the Sunshine Ordinance, Ethics Commission and Enforcement.

Here is where we enter the circular San Francisco government "accountability". The Ethics Commission does not "enforce" any Sunshine Ordinance violations, even if they are sent over from SOTF. In their response to my public record request, they state: "Regarding your question about the applicability of **Admin. Code Sec. 67.35(d)**, this code section does not establish the Ethics Commission as having jurisdiction for the enforcement of Sunshine Ordinance provisions beyond allegations of willful violations by City elected officials and Department Heads provided by **Sec. 67.34** or the Show Cause hearing process (see Ethics Commission Enforcement Regulations Section 10)."

Sunshine Ordinance Sec. 67.35 (d) *"Any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a City or State official 40 days after a complaint is filed."*

On the face of it, **Sec. 67.35 (d)** seems to imply **all the Sunshine Ordinance** with "**under this act**" for both enforcement and penalties and not just the **Sec. 67.34** provision, but the Ethics Commission and City Attorney's Office narrowly reads it to mean only **Sec 67.34** which says *"The willful failure of any elected official, department head, or other managerial city employee 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."

The problem with this narrow interpretation is if you are saying **Sec. 67.35 (d)** is really only **Sec. 67.34** then **67.35 (d)** becomes redundant and unneeded. **Sec. 67.35 (d)** adds "if enforcement action is not taken by a City or State official 40 days after a complaint is filed." **Sec. 67.35 (d)** does not say "elected" or add the other qualifier "department head" but adds "State". **Sec. 67.35 (d)** would include SOTF or any government body or official a complaint is filed with.

If you use the Ethics Commission interpretation logic of **Sec 67.35 (d)** and apply it to "in any court of competent jurisdiction" part of this provision, the Superior Court of San Francisco would be just tied to **Sec. 67.35 (a)** any withholding of copy or inspection of records or right to attend meetings after not being allowed to attend one or more meetings. Shortening the explanation, this leaves only SOTF to "enforce" the Sunshine Ordinance with few penalties. You can go down several other rabbit holes with other sections of the Sunshine Ordinance applying the same Ethics Commission interpretation logic. Ultimately, the city's narrow interpretation of the Sunshine Ordinance makes it unenforceable. City officials can be less accountable and transparent.

The California Constitution, the California Appeal Courts, and the California Supreme Court have held firmly that where there is any ambiguity in the law, it should be interpreted to allow greater public access. This is not happening in this city.

SOTF has the power to advise broader interpretation for public access and greater transparency. The **Sunshine Ordinance Sec. 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.*" Though "advise" and "provide information" is weak. The current members of SOTF do not seem to want to cross city officials, least they do not get approved again.

The dismissal letter also stated, "credible evidence refutes the allegation". This evidence is not public or maybe it is. It is unknown what evidence they claim. Testing out the **Sunshine Ordinance Sec. 67.21 (c)** I asked the Ethics Commission to "*identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b).*" As I suspected the Ethics Commission responded "Regarding your request for a statement describing investigative records, under SF Charter Sec. C3.699-13(a), Ethics Commission investigations must be conducted in a confidential manner and records of any investigation are considered confidential information. Any Commission employee who discloses information about any preliminary investigation shall be deemed guilty of official misconduct. Therefore, the Commission has withheld any records associated with the investigation or any description of the nature of those confidential investigative records."

To my knowledge, this **Sec. 67.21 (c)** disclosure has little actual meaning, especially when records are claimed to be “exempt from disclosure”. Even when records could be disclosed, this provision is not enforced by SOTF. I asked Mr. Steinberg, custodian of records of Public Works for a **Sec 67.21 (c)** disclosure statement and was given that giving me only the total quantity in the thousands was sufficient “to enable a requester to identify records”. I think this does not adhere to the law and pointed this out to SOTF. They did nothing.

Right now, I would say the enforcement of the Sunshine Ordinance and ethics in San Francisco is weak. Partly because there are few actual penalties with both. Most of the San Francisco ethics code penalties **AC Sec. 15.105** Suspension and Removal (penalties) goes to “any elective officer” and a hodgepodge of commissions, but not all. It seems crazy to have some commissions and not all commissions, especially if they are oversight bodies or quasi-judicial bodies. **AC Sec. 15.105.** does not include the Sunshine Ordinance Task Force. The most SOTF and the Ethics Commission can do without penalties is find a violation and make a recommendation.

Government officials can skirt around the weak laws, and vote that they have a “conflict of interests” on an issue they know little about or nothing at all. They do not need to state what their “conflict of interest” is. This way, if they actually have a “conflict of interest” they can say they didn’t know. Custodians of records can make up the number of records that they say respond to a request and not actually have to produce all the records or be accountable if they are just dumping junk records to delay. In many cases, people’s requests are outright ignored even after a SOTF determination. People never get their records. The right for a member of the public to make a record request or have a government official actually assist in helping find specific records they are looking for is considered an attack on that government official or department. SOTF, SOTF committees, departments, and other commissions regularly violate or do not find violations of public access laws or follow their own procedures.

This accounting may be small potatoes, but accountability, the people’s right to know, and democracy can die a death by a thousand cuts.

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.