

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

July 6, 2010

DATE THE DECISION ISSUED

June 22, 2010

SUZANNE DUMONT v RECREATION AND PARKS DEPT. (10022)

FACTS OF THE CASE

Complainant Suzanne Dumont alleges that the Recreation and Parks Department (the "Department") failed to respond adequately to her Public Records Request for the names of persons on the selection panel for the Stow Lake Boathouse Concession RFQ. The department responds that the information sought by the complainant may not be disclosed under the Ordinance until after the selection is made during the competitive bidding process.

COMPLAINT FILED

On May 3, 2010, Ms. Dumont filed a complaint with the Task Force alleging a violation.

HEARING ON THE COMPLAINT

On June 22, 2010, Complainant Ms. Dumont presented her case before the Task Force. Respondent agency was represented by Nick Kinsey of the Recreation and Parks Department.

Ms. Dumont told the Task Force that she twice sought from the Department the names of panelists evaluating the Stow Lake Boathouse Concession RFQ and in both cases she was turned down. She said her first request was made to Mr. Kinsey, Property Manager for the Department. The second request was made to Olive Gong, the Department's Custodian of Records. Both of them, she said, responded by saying that on the advice of the City Attorney's Office, the names would be released only at the end of the selection process. Ms. Dumont pointed out that Section 67.24(e) makes specific reference only to RFPs, and not RFQs. She also said the Department has previously revealed the names of other panelists prior to selection, and she thus did not understand the need for secrecy in this instance.

Mr. Kinsey said the City Attorney's Office had advised the Department that Section 67.24(e)(1) prohibits it from releasing the names until after the selection process ends. That message, he said, was conveyed to Ms. Dumont. He said he received the same advice

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when the second request from Ms. Dumont came in. The City needs to protect the integrity of the selection process from attempts by competitors to influence it, he said.

Member Snyder said the second part of Section 67.24(e)(1) does not prohibit the release of information. Its plain language, he said, would seem to *allow* a department to release the information at any stage of the process, but a department *must* release it at the end.

DCA Jerry Threet stated that, while Section 67.24(e)(1) may not prohibit the release of the names of the selection panel, it clearly allows the Department to withhold such information until after the selection process is completed. DCA Threet added that the Administrative Code may contain a prohibition on the release of this information, but he has not had an opportunity to review that code.

Member Snyder added that it was the duty of the Department to cite the authority if other laws were applicable and in this case, because it did not, the department violated Section 67.27.

Member Cauthen said the complainant has included numerous examples of panelist names being made known to the public and suggested that the Department should release the names of the panel for the Stow Lake Boathouse Concession RFQ ,even if it is not required to do so.

In closing, Mr. Kinsey said he believed the department made the correct determination based on advice provided by the City Attorney's Office.

Ms. Dumont said the department has numerous times claimed it was withholding the information because of the need to protect the integrity of the process. She said she is not a competitor and was not asking for fiduciary information. Her main interest, she said, was in who was on the panel because panelists are paid very well with taxpayers' money. Another reason was that her group has been excluded in the process and wanted to participate, she said.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented, the Task Force finds that the agency violated the Ordinance.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Section 67.27 of the Sunshine Ordinance by failing to cite the specific statutory authority for withholding the information. The Respondent shall, within five days of the issuance of this Order, provide the Complainant with written justification for withholding the requested information, citing the specific provision(s) in statutory and/or case law exempting the information from disclosure. The Respondent is also instructed to send a representative knowledgeable in this matter to appear before the Compliance and Amendments Committee on July 13, 2010.

ORDER OF DETERMINATION

This Order of Determination was adopted by the Sunshine Ordinance Task Force on June 22, 2010, by the following vote: (Snyder / Goldman)

Ayes: Snyder, Cauthen, Washburn, Knoebber, Goldman, Wolfe Chan, Johnson, Williams, Knee

Excused: Manneh



Richard A. Knee, Chair
Sunshine Ordinance Task Force

- c: Jerry Threet, Deputy City Attorney
- Jana Clark, Deputy City Attorney
- Suzanne Dumont, Complainant
- Nick Kinsey, Respondent
- Olive Gong, Respondent