SUNSHINE ORDINANCE
TASK FORCE

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ORDER OF DETERMINATION

DATE THE DECISION ISSUED
March 31, 2008

KIMO CROSSMAN v. SAN FRANCISCO CITY ATTORNEY'S OFFICE AND THE SUPERVISOR OF RECORDS (08006)

FACTS OF THE CASE

On November 30 2007, Kimo Crossman (Crossman) made an Immediate Disclosure Request ("IDR") for public records with Matt Dorsey of the City Attorney's Office. Crossman's IDR requested all materials related to a DCA Buck Delventhal meeting on 10/9/07 re: Board of Supervisors Sunshine Task Force Hearings re: Supervisor Peskin and Maxwell and any materials or communications before or after this meeting relating to the matters discussed. Kimo Crossman also requested a 15-minute phone call with DCA Delventhal to obtain oral public information.

On December 4, 2007, Alexis Thompson responded on behalf of the City Attorney's Office ("CAO") and based under Section 6253(c) of the Public Records Act and Section 67.25(b) of the Sunshine Ordinance, the CAO invoked an extension of time not to exceed 14 days to respond to the IDR.

Crossman claimed that he did not receive the records even after the extension. On 1/3/08, Crossman petitioned the Supervisor of Records from the City Attorney's Office and asked for a determination. DCA Paula Jesson responded to the request. Crossman stated that DCA Jesson's response was that Kimo Crossman would have to wait until the City Attorney's Office completes their review of records.

COMPLAINT FILED

On November 6, 2007, Crossman filed a complaint against City Attorney's Office and on February 12, 2008 amended his complaint to include the Supervisor or Records alleging violations of Sections 67.1, 67.25(d), 67.26, 67.27, 67.21(a) and (b), (i), (l), 67.24(d), and 67.34 of the Sunshine Ordinance and State Government Code Sections 6253, and 6255.

HEARING ON THE COMPLAINT

On March 25, 2008, Complainant Crossman appeared before the Task Force and presented his complaint, specifically focusing on the redaction of attorney-client privilege and/or work product materials from e-mails that were belatedly produced by the CAO and failure of Mr. Deventhal to schedule a 15 minute phone conversation under 67.22(e). Respondent Agency was represented by Alexis Thompson who presented the Agency's defense.

The issue in the case is whether the Agency violated Section(s) 67.1, 67.21, 67.22, 67.26, 67.27, 67.29-5 and/or 67.34 of the Ordinance and/or Sections 6253 and/or 6255 of the California Public Records Act.

ORDER OF DETERMINATION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented the Task Force finds the testimony of Kimo Crossman to be persuasive and finds that Sections 67.21 (i) and 67.24 (b)(1)(iii) to be applicable in this case with respect to the impermissible redactions being based on attorney-client privilege and work product protection. The Task Force does not find the testimony provided by the Agency persuasive to this case. The Task Force took no action regarding the alleged violation of 67.22(e).

The Task Force finds that under the plain language of the Sunshine Ordinance, the advice the CAO gave to Supervisors and their agents regarding compliance with Open Government law is not exempt from disclosures. "All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records." *See* 67.21(i). "Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance." *See* 67.24(b)(1)(iii).

These specific statutory enactments prevail over any other applicable state law protection, including Cal. Govt. Code § 6254(k), pursuant to the terms of the Sunshine Ordinance and the California Public Records Act. *See* § 67.24 (providing "enhanced right of public access to information and records"); Cal. Govt. Code § 6253(e).

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated §§ 67.21 (i) and 67.24 (b)(1)(iii) of the Sunshine Ordinance for improperly redacting attorney-client privilege and work-product from the e-mails produced. The agency shall release the records requested without redactions within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on April 9, 2008.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 25, 2008, by the following vote: (Comstock/Goldman)
Ayes: Craven, Knee, Cauthen, Comstock, Chan, Goldman, Williams
Noes: Pilpel
Absent: Wolfe
Excused: Chu

Doug Comstock, Chair
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney
Kimo Crossman, Complainant
Alexis Thompson, Deputy Press Secretary