

Date: January 8, 2008

Item No. 17

File No. 07090

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Complaint by: Kimo Crossman v. MTA and MTA Commission**
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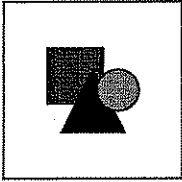
Completed by: Frank Darby

Date: January 2, 2008

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

MEMORANDUM

December 27, 2007

KIMO CROSSMAN v. MUNICIPAL TRANSPORTATION AGENCY & THE MTA COMMISSION (07090)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

On October 2, 2007, Kimo Crossman sent an Immediate Disclosure Request to the MTA and requested that the MTA post on its website any documents exchanged- including e-mails by the end of each day during the course of negotiations between the MTA and Clear Channel on the Bus Shelter deal. Kimo Crossman also requested a written summary of all verbal discussions as described by section 67.24(e) of the Sunshine Ordinance.

On October 4, 2007, Caroline Celaya on behalf of the MTA responded to the IDR. On October 4, 2007, Kimo Crossman replied back and stated that the MTA's invocation of an extension of time does not apply to real time negotiations.

On October 25, 2007, Caroline Celaya provided information regarding the negotiations and Kimo Crossman responded by stating that the information was not provided on a timely basis because the MTA Commission approved the contract on 9/4/07 and the public did not have the opportunity to review the contract even though it was later provided 10 days before the Board of Supervisors considered the contract on October 16, 2007.

COMPLAINANT FILES COMPLAINT

On November 6, 2007, Kimo Crossman filed a complaint against the MTA alleging violations of the Sunshine Ordinance.

APPLICABLE STATUTORY SECTIONS:

1. Section 67.21 addresses general requests for public documents.
2. Section 67.24 addresses draft versions of an agreement negotiated by representatives of the City with some other party.
3. Section. 67.25 addresses Immediate Disclosure Requests.

Memorandum

APPLICABLE CASE LAW:

none

ISSUES TO BE DETERMINED

1. FACTUAL ISSUES

A. Uncontested Facts:

The parties agree to the following facts:

- Crossman submitted public records requests to MTA for draft versions of the bus shelter agreement being negotiated.
- The MTA provided draft versions of the agreement.

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

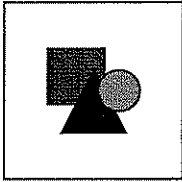
Whether the response from MTA was reasonable and timely.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

1. none

2. LEGAL ISSUES/ LEGAL DETERMINATIONS:

- Were sections of the Sunshine Ordinance (Section 67.21), Brown Act, and/or Public Records Act were violated?
- Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
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MEMORANDUM

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS:

THE TASK FORCE FINDS THAT THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

Memorandum

ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE (THE SUNSHINE ORDINANCE) UNLESS OTHERWISE SPECIFIED

Section 67.21 addresses general requests for public documents.

This section provides:

- (a) Every person having custody of any public record or public information, as defined herein, ... shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.
- (b) A custodian of a public record shall as soon as possible and within **ten days** (emphasis added) following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

Section 67.24(a)(2) provides:

- 2.) Draft versions of an agreement being negotiated by representatives of the City with some other party need not be disclosed immediately upon creation but must be preserved and made available for public review for 10 days prior to the presentation of the agreement for approval by a policy body, unless the body finds that and articulates how the public interest would be unavoidably and substantially harmed by compliance with this 10 day rule, provided that policy body as used in this subdivision does not include committees. In the case of negotiations for a contract, lease or other business agreement in which an agency of the City is offering to provide facilities or services in direct competition with other public or private entities that are not required by law to make their competing proposals public or do not in fact make their proposals public, the policy body may postpone public access to the final draft agreement until it is presented to it for approval.

Memorandum

Section 67.25 provides:

a.) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

b.) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requestor shall be notified as required by the close of business on the business day following the request.

c.) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request

d.) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected.

Section 67.26 provides:

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to

Memorandum

the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

Section 67.27 provides:

Any withholding of information shall be justified in writing, as follows:

- a.) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- b.) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act of elsewhere.
- c.) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- d.) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

The California Public Records Act is located in the state Government Code Sections 6250 et seq. All statutory references, unless stated otherwise, are to the Government Code.

Section 6253 provides.

- a.) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the records after deletion of the portions that are exempted by law.
- b.) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of

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fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

c.) Each agency, upon a request for a copy of records, shall within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefore....

Section 6255 provides:

a.) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

b.) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.

Gavin Newsom | Mayor
Rev. Dr. James McCray Jr. | Chairman
Cameron Beach | Director
Shirley Breyer Black | Director
Wil Din | Director
Peter Mezey | Director
Leah Shahum | Director
Tom Nolan | Director
Nathaniel P. Ford, Sr. | Executive Director/CEO

December 24, 2007

Honorable Members, Sunshine Ordinance Task Force
c/o Frank Darby, Jr., Administrator
Board of Supervisors Clerk's Office
City Hall, Room 244
One Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

RE: Complaint of Kimo Crossman against the San Francisco Municipal Transportation Agency, Complaint No. 07090

Dear Task Force Members:

For purposes of the Task Force hearing on January 8, 2008, the Municipal Transportation Agency (the "SFMTA") submits the following response to Mr. Crossman's complaint filed with the Task Force. As set forth below, it is the position of the SFMTA that all responsive records have already been provided to Mr. Crossman.

Complaint Committee Meeting

As an initial matter, the Administrator for the Task Force notified the SFMTA that the Complaint Committee ("Committee") meeting would be held at 4:00 p.m. on Tuesday, December 11, 2007. In response, the SFMTA submitted a letter to the Committee that raised a number of jurisdictional issues and stated the department's view of the relevant issues to be decided. Without notifying the SFMTA, the Committee met at 3:00 pm on December 11th and decided to forward Mr. Crossman's complaint to the Task Force.¹ Because of the unannounced time change, the SFMTA's representative was not present at the meeting when the Committee took action.

While the SFMTA does not know whether the time change complies with public noticing requirements under the Brown Act and the Ordinance, the SFMTA's position is that the Committee did not fulfill its obligations when it reviewed Mr. Crossman's complaint for three reasons. First, the Committee did not afford its representative an opportunity to present the department's position. Second, the Committee did not address the jurisdictional issues raised by the SFMTA. Third, the Committee did not narrow the focus of the complaint to the relevant issues.

Since the Committee neither addressed the jurisdictional issues nor narrowed the focus of the complaint to the relevant issues, we address the SFMTA's position with respect to these two issues again.

¹ The SFMTA requested a copy of the audiotape of the Committee's deliberations but has not yet received the tape.

Jurisdiction of the Task Force

The California Public Records Act (the "Act") establishes a right of access to public records for members of the public. The Sunshine Ordinance (the "Ordinance") expands on the public's right of access to City records and creates the Task Force. The role of the Task Force in a case involving denial of a public records request is to determine whether the law requires the City department to make the records in question available to the public. S.F. Admin. Code section 67.21(e).

While the Task Force has jurisdiction to address the three issues raised by Mr. Crossman's complaint, there are certain issues as to which it has neither jurisdiction nor authority to find a violation of the Ordinance.

First, Mr. Crossman complains that the SFMTA should have treated the Clear Channel contract as a franchise agreement. The Ordinance imposes special disclosure requirements for documents relating to negotiations for a lease, permit, or franchise agreement, and for some other types of contracts. S.F. Admin. Code section 67.24(e)(3). In response to Mr. Crossman's immediate disclosure request, the SFMTA provided Mr. Crossman electronic copies of all drafts of the contract exchanged between the parties and all other responsive public records relating to the negotiations of the Clear Channel contract that would have been required if the contract were a franchise. Characterization of the Clear Channel contract as a franchise agreement would not entitle Mr. Crossman to any records he did not receive. Because the question has no impact on Mr. Crossman's access to records, the Ordinance does not give the Task Force the function of determining, in the abstract, whether a particular agreement is a franchise agreement.

Second, Mr. Crossman asserts that draft versions of the Clear Channel contract were not preserved and available for public review ten days before the SFMTA Board meeting on September 4, 2007, neither Mr. Crossman nor any other member of the public requested draft versions of the contract prior to the SFMTA Board meeting. These documents were, in fact, available. On the facts of this case, there is no basis for the Task Force to find a violation of the Ordinance when neither Mr. Crossman nor anyone else sought to obtain the records in question.

Third, Mr. Crossman's complaint cites the example of the Public Utilities Commission's (the "PUC") posting of certain documents pertaining to negotiation of the Wi-Fi contract. These postings went beyond what the law required. Every department has discretion to permit greater access to records than the law requires. But the Task Force has no jurisdiction to find a violation of the law based on a department's failure to take steps that neither the Public Records Act nor the Ordinance require.

Finally, even if the Task Force were to find that the SFMTA violated the Ordinance, the Ordinance does not give the Task Force the jurisdiction to invalidate the contract or require the SFMTA Board to reconsider the Clear Channel contract as Mr. Crossman requests.

Issues for the Task Force

In light of the above discussion and the allegations in Mr. Crossman's complaint, we think the issues are as follows: (1) whether the SFMTA produced copies of all documents exchanged and related to the position of the parties, including draft contracts, in compliance with Section 67.24(e)(3); (2) whether draft versions of the Clear Channel contract that existed during the ten days immediately preceding the SFMTA Board's September 4th meeting were provided to

Mr. Crossman; and (3) whether the SFMTA properly invoked a fourteen day extension in response to Mr. Crossman's immediate disclosure request.

The SFMTA's Response

We respond to the three issues we identified for the Task Force to decide.

First, the SFMTA provided Mr. Crossman all records required to be produced under the Ordinance and the Public Records Act. For certain lease or permit agreements and any franchise agreement, Section 67.24(e)(3) requires that all documents exchanged and related to the position of the parties, including draft contracts, be made available for public inspection and copying upon request. Between October 5, 2007 and October 18, 2007, the SFMTA provided electronic copies of all draft contracts exchanged between the parties and all other responsive public records relating to the negotiations of the Clear Channel contract. On October 19, 2007, the SFMTA produced one additional record that it had not previously provided Mr. Crossman within the fourteen day extension period.

The Ordinance does not require the SFMTA to prepare a summary of negotiations in response to Mr. Crossman's request. Section 67.24(e)(3) provides that, if the records exchanged do not provide a meaningful representation of the respective positions, the city attorney or city representative familiar with the negotiations shall prepare written summaries of the respective positions within five working days following the final day of negotiation for any given week if requested in writing by a member of the public. Since the documents provided to Mr. Crossman provided a meaningful representation of the positions of the parties negotiating the contract, the SFMTA was not required to prepare a summary of negotiations.

Second, the SFMTA provided to Mr. Crossman all draft versions of the Clear Channel contract that existed ten days immediately preceding the SFMTA Board's September 4th meeting. These documents were available to anyone prior to the meeting upon request.

Third, both the Ordinance and the Public Records Act permit the SFMTA to invoke an extension of up to fourteen additional days to respond to an immediate disclosure request under certain circumstances. Draft contracts, however, must be made available for public review not less than ten days prior to approval by a policy body. The SFMTA received Mr. Crossman's immediate disclosure request on October 3, 2007. On October 4, 2007, the SFMTA invoked a fourteen day extension to respond to the request. On October 5, 2007, the SFMTA provided Mr. Crossman electronic copies of all draft contracts exchanged between the parties.² By October 18, 2007, the SFMTA provided Mr. Crossman all other responsive public records relating to the negotiations of the Clear Channel contract with the exception of one document that was provided on October 19th.

Respectfully submitted,



Murray Bond
Deputy Director
For Strategic Communications

² The Board of Supervisors approved the Clear Channel contract on first reading on October 16, 2007, and on second reading on October 23, 2007.



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

December 3, 2007

Sue Cauthen, Chair
Members of the Complaint Committee

Re: Kimo Crossman (07090) v. Municipal Transportation Agency, the MTA Commission
and City Attorney Dennis Herrera

Dear Chair Cauthen and Members of the Complaint Committee:

This letter addresses the issue of whether the Sunshine Ordinance Task Force ("Task Force") has jurisdiction over the complaint of Kimo Crossman against the San Francisco Municipal Transportation Agency and its Commission ("MTA") and City Attorney Dennis Herrera.

BACKGROUND

On October 2, 2007, Kimo Crossman sent an Immediate Disclosure Request to the MTA and requested that the MTA post on its website any documents exchanged- including e-mails by the end of each day during the course of negotiations between the MTA and Clear Channel on the Bus Shelter deal. Kimo Crossman also requested a written summary of all verbal discussions as described by section 67.24(e) of the Sunshine Ordinance.

On October 4, 2007, Caroline Celaya on behalf of the MTA responded to the IDR. On October 4, 2007, Kimo Crossman replied back and stated that the MTA's invocation of an extension of time does not apply to real time negotiations.

On October 25, 2007, Caroline Celaya provided information regarding the negotiations and Kimo Crossman responded by stating that the information was not provided on a timely basis because the MTA Commission approved the contract on 9/4/07 and the public did not have the opportunity to review the contract even though it was later provided 10 days before the Board of Supervisors considered the contract on October 16, 2007.

COMPLAINT

On November 6, 2007, Kimo Crossman filed a complaint against the MTA and City Attorney Dennis Herrera alleging violations of the Sunshine Ordinance.

SHORT ANSWER

Based on Complainant's allegation and the applicable sections of the Sunshine Ordinance and the California Public Records Act, which are cited below, the Sunshine Ordinance Task

Letter to the Complaint Committee
Page 2
December 3, 2007

Force *does* have jurisdiction over the allegation against the MTA but **not** against City Attorney Dennis Herrera. The allegations are covered under (67.21 and 67.24) of the Ordinance.

DISCUSSION AND ANALYSIS

Article I Section 3 of the California Constitution as amended by Proposition 59 in 2004, the State Public Records Act, the State Brown Act, and the Sunshine Ordinance as amended by Proposition G in 1999 generally covers the area of Public Records and Public Meeting laws that the Sunshine Ordinance Task Force uses in its work.

The Sunshine Ordinance is located in the San Francisco Administrative Code Chapter 67. All statutory references, unless stated otherwise, are to the Administrative Code. Section 67.21 generally covers requests for documents and Section 67.25 covers Immediate Disclosure Requests. In addition Section 67.24 deals with the procedure for disclosure of contracts, bids and proposals. CPRA Section 6253 generally covers Public Records Requests.

In this case, Kimo Crossman claims that the MTA did not comply with the requirements of 67.24 of the Ordinance and that the MTA improperly invoked an extension of time in which to comply with the IDR. The Task Force has jurisdiction to hear the complaint against the MTA. The Task Force will determine whether the MTA violated the Ordinance and/or the Public Records Act.

With regard to the complaint against City Attorney Dennis Herrera, the information provided does not relate to the conduct of the City Attorney. Hence the Task Force does not have jurisdiction in the complaint against City Attorney Dennis Herrera.



<complaints@sfgov.org>

11/14/2007 11:55 AM

To <soft@sfgov.org>

cc

bcc

Subject Sunshine Complaint

Submitted on: 11/14/2007 11:55:21 AM

Department: City Attorney, SFMTA Commission, and SFMTA Agency

Contacted: Robin Reitzes (City Attorney) & Dennis Herrera (City Attorney),
SFMTA board (please list all members), Caroline Celaya (SFMTA employee)

Public_Records_Violation: Yes

Public_Meeting_Violation: Yes

Meeting_Date: September 4, 2007

Section(s)_Violated: 67.1, 67.24 a 2, 67.24 e 3 iii, 67.21 b

Description: Clear channel contract which should have been treated as a franchise Agreement should have been available for public review ten days before 9/4 SFMTA meeting when the execution was approved. Instead public record emails show changes being made through at least 10/4 the day before the contract was submitted to a Board of Supervisor Committee for review. Lastly, there was an invalid invocation of an extension for records access which must be produced in the course of negotiations. And no summary of verbal positions was ever provided.

I'm asking the Taskforce to find the City Attorney, SFMTA and SFMTA Board in violation, and direct that the contract be reagentized to allow an informed public to participate in the approval process.

There is already precedent for this with regards to a PUC Wi-Fi Pole Agreement when they almost violated the ten day rule.

Please include attached emails in the records for this complaint.

Hearing: Yes

Date: November 6, 2007

Name: Kimo Crossman

Address:

City:

Zip:

Phone:

Email: kimo@webnetic.net

Anonymous:

User Data



"Kimo Crossman"
<kimo@webnetic.net>
11/06/2007 05:48 PM

To "SOTF" <sof@sfgov.org>, <home@prosf.org>
"Ernest Llorente" <Ernest.Llorente@sfgov.org>,
cc <robin.reitzes@sfgov.org>, "Celaya, Caroline"
<Caroline.Celaya@sfmta.com>, "Alexis Thompson"
bcc
Subject Filing Sunshine Complaint against SFMTA, SFMTA board
and City Attorney

Submitted on: 11/6/2007

Dept: City Attorney and SFMTA Commission and SFMTA Agency

contacted: Robin Reitzes (City Attorney) & Dennis Herrera (City Attorney, SFMTA board (please list all members), Caroline Celaya (SFMTA employee)

violation:

section: 67.1, 67.24 a 2, 67.24 e 3 iii, 67.21 b

description:

Clear channel contract which should have been treated as a franchise Agreement should have been available for public review ten days before 9/4 SFMTA meeting when the execution was approved. Instead public record emails show changes being made through at least 10/4 the day before the contract was submitted to a Board of Supervisor Committee for review. Lastly, there was an invalid invocation of an extension for records access which must be produced in the course of negotiations.

I'm asking the Taskforce to find the City Attorney, SFMTA and SFMTA Board in violation, and direct that the contract be reagentized to allow an informed public to participate in the approval process.

There is already precedent for this with regards to a PUC Wi-Fi Pole Agreement when they almost violated the ten day rule.

Please include attached emails in the records for this complaint.

hearing_yes: Yes

name: Kimo Crossman

address:

city:

zip:

date:

phone:

email: kimo@webnetic.net

anonymous:

From: Celaya, Caroline [mailto:Caroline.Celaya@sfmta.com]
Sent: Tuesday, November 06, 2007 9:54 AM
To: Kimo Crossman
Cc: Reitzes, Robin M
Subject: FW: Clear Channel negotiations - Did not follow Sunshine Procedures - Cure and Correct required

Mr. Crossman:

Below please find confirmation from the SFMTA Board Secretary.

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

From: Boomer, Roberta
Sent: Tuesday, November 06, 2007 9:47 AM
To: Celaya, Caroline
Subject: RE: Clear Channel negotiations - Did not follow Sunshine Procedures - Cure and Correct required
Caroline:

In response to Mr. Crossman's request, I have provided the complete e-mail chain to the MTA Board of Directors.

Sincerely,

Roberta Boomer

From: Kimo Crossman [mailto:kimo@webnetic.net]
Sent: Friday, November 02, 2007 8:44 AM
To: Celaya, Caroline
Cc: Reitzes, Robin M
Subject: RE: Clear Channel negotiations - Did not follow Sunshine Procedures - Cure and Correct required
Ms. Celaya/Ms. Reitzes:

PLEASE SEND THIS COMPLETE EMAIL CHAIN TO ALL MEMBERS OF THE SFMTA BOARD. THIS IS A CURE AND CORRECT REQUEST.

Please respond to my questions below or inform me of plans to Cure and Correct this matter by reagentizing the contract for SFMTA as is legally required under the 10 day rule and please provide findings justifying why this is not a Franchise Agreement

From: Kimo Crossman [mailto:kimo@webnetic.net]
Sent: Monday, October 29, 2007 5:42 PM
To: 'Celaya, Caroline'
Cc: 'home@prosf.org'; 'Allen Grossman'; 'tim@sfbg.com'; 'Amanda Witherell'
Subject: RE: Immediate Disclosure Request - Clear Channel negotiations

Ms. Celaya:

Wondering if you could respond to these two questions below?

From: Kimo Crossman [mailto:kimo@webnetic.net]
Sent: Thursday, October 25, 2007 5:42 PM
To: 'Celaya, Caroline'
Subject: RE: Immediate Disclosure Request - Clear Channel negotiations

- 1) Hmm, I thought the first policy body approval was the SFMTA on 9/4 when the contract was still being revised? That would be a Sunshine violation and would invalidate the contract.
- 2) Also still wondering about the Public Right of Way question - why isn't this a Franchise Agreement?

Thanks

From: Celaya, Caroline [mailto:Caroline.Celaya@sfmta.com]
Sent: Thursday, October 25, 2007 5:03 PM
To: Kimo Crossman
Subject: RE: Immediate Disclosure Request - Clear Channel negotiations

Dear Mr. Crossman:

As required by the San Francisco Sunshine Ordinance, the draft versions of the Transit Shelter Advertising Agreement negotiated with Clear Channel Outdoor, Inc. have been available for public inspection since 10 days before the Board of Supervisors considered the ordinance approving the agreement on first reading on Tuesday, October 16, 2007. In addition, I e-mailed the draft versions of the agreement to you on Friday, October 5, 2007, in response to your public records request.

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

From: Kimo Crossman [mailto:kimo@webnetic.net]
Sent: Thursday, October 25, 2007 10:00 AM
To: Celaya, Caroline
Subject: RE: Immediate Disclosure Request - Clear Channel negotiations
I'm trying to understand if this provision of the Sunshine ordinance was followed - the Ten Day rule

67.24 (a)

(2) Draft versions of an agreement being negotiated by representatives of the City with some other party need not be disclosed immediately upon creation but must be preserved and made available for public review for 10 days prior to the presentation of the agreement for approval by a policy body, unless the body finds that and articulates how the public interest would be unavoidably and substantially harmed by compliance with this 10 day rule, provided that policy body as used in this subdivision does not include committees. In the case of negotiations for a contract, lease or other business agreement in which an agency of the City is offering to provide facilities or services in direct competition with other public or private entities that are not required by law to make their competing proposals public or do not in fact make their proposals public, the policy body may postpone public access to the final draft agreement until it is presented to it

for approval.

Also still wondering why this was not treated as a Franchise agreement because it related to Public-Right-Of-Way - can you enlighten me?

Thanks

From: Celaya, Caroline [mailto:Caroline.Celaya@sfmta.com]
Sent: Thursday, October 25, 2007 9:56 AM
To: Kimo Crossman
Subject: RE: Immediate Disclosure Request - Clear Channel negotiations

Revisions were made to the contract at the request of the Board of Supervisors between the October 10 hearing at the Budget and Finance Committee and the first reading of the ordinance at the full Board of Supervisors on October 16. No further changes were made.

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

From: Kimo Crossman [mailto:kimo@webnetic.net]
Sent: Wednesday, October 24, 2007 8:38 PM
To: Celaya, Caroline
Subject: RE: Immediate Disclosure Request - Clear Channel negotiations

Thanks for your answers - Ok, so the agreement was approved by the BOS on Tuesday the 23rd. I guess I'm asking, when was it finalized - As you know, the copies of emails previously provided to me by your office show lots of negotiations certainly after the 9/4/07 SFMTA resolution approving execution and even into October.

Thanks

From: Celaya, Caroline [mailto:Caroline.Celaya@sfmta.com]
Sent: Wednesday, October 24, 2007 5:25 PM
To: Kimo Crossman
Subject: RE: Immediate Disclosure Request - Clear Channel negotiations

The SFMTA response is attached.

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

From: Kimo Crossman [mailto:kimo@webnetic.net]
Sent: Monday, October 22, 2007 11:52 PM
To: Celaya, Caroline
Subject: RE: Immediate Disclosure Request - Clear Channel negotiations
On what date was the Clear Channel contract signed by SFMTA? The version you sent is a blank final one.

On what date was it ratified by SFMTA board?

On what date was it ratified by BOS?

Thank you

From: Celaya, Caroline [mailto:Caroline.Celaya@sfmta.com]
Sent: Friday, October 05, 2007 5:39 PM
To: Kimo Crossman
Subject: RE: Immediate Disclosure Request - Clear Channel negotiations

Dear Mr. Crossman;

Please see the attached response from the SFMTA.

Thank you,

Caroline

*Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103*

From: Kimo Crossman [mailto:kimo@webnetic.net]
Sent: Thursday, October 04, 2007 5:09 PM
To: Celaya, Caroline
Cc: 'Bruce Brugmann'; 'Steve Jones'; tim@sfbg.com; 'Allen Grossman'
Subject: RE: Immediate Disclosure Request - Clear Channel negotiations
Ms. Celeya

You cannot invoke an extension for these documents because they are covered under a different portion of Sunshine - in particular the section regarding ongoing/real-time negotiations. And in fact the example of the Wi-Fi discussions below, documents were posted in near real-time.

67.24 (e) (3)

all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the city attorney or city representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five working days following the final day of negotiation of any given week.

Also please state the other departments you claim you need to consult with and the remote facilities/divisions.

From: Celaya, Caroline [mailto:Caroline.Celaya@sfmta.com]
Sent: Thursday, October 04, 2007 4:55 PM
To: Kimo Crossman
Subject: RE: Immediate Disclosure Request - Clear Channel negotiations

The SFMTA response is attached.

Caroline

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

From: Kimo Crossman [mailto:kimo@webnetic.net]
Sent: Tuesday, October 02, 2007 10:08 PM
To: True, Judson
Cc: 'Steve Jones'; 'Amanda Witherell'; 'Allen Grossman'; tim@sfbg.com; 'Bruce Brugmann'
Subject: Immediate Disclosure Request - Clear Channel negotiations

Immediate Disclosure Request

Dear SFMTA

Please post on your website any documents exchanged - including emails by end of each day during the course of your negotiations with Clear Channel on the Bus Shelter deal. Also please provide a written summary of all verbal discussions as described below on a weekly basis.

There is precedent for this request. Please see this example of postings of documents exchanged and verbal summaries during the course of the Techconnect / EarthLink process.

http://www.sfgov.org/site/tech_connect_page.asp?id=40515

Thank you

Kimo Crossman

67.24 e

(3) During the course of negotiations for:

(i) personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;

(ii) leases or permits having total anticipated revenue or expense to the City and County of five hundred thousand dollars (\$500,000) or more or having a term of ten years or more; or

(iii) any franchise agreements,

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attorney or city representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying. At the end of each fiscal year, each City department shall provide to the Board of Supervisors a list of all sole source contracts entered into during the past fiscal year. This list shall be made available for inspection and copying as provided for elsewhere in this Article.



KCrossman Clear Channel emails 1 of 4.pdf

----- Message from "Celaya, Caroline" <Caroline.Celaya@sfmta.com> on Fri, 5 Oct 2007 16:38:56 -0800 -----

To: "Kimo Crossman" <kimo@webnetic.net>

Subject: RE: Immediate Disclosure Request - Clear Channel negotiations

Dear Mr. Crossman;

Please see the attached response from the SFMTA.

Thank you,

Caroline

*Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103*

From: Kimo Crossman [mailto:kimo@webnetic.net]
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67.24 (e) (3)

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Also please state the other departments you claim you need to consult with and the remote facilities/divisions.

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Sent: Thursday, October 04, 2007 4:55 PM
To: Kimo Crossman
Subject: RE: Immediate Disclosure Request - Clear Channel negotiations

The SFMTA response is attached.

Caroline

*Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103*

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Sent: Tuesday, October 02, 2007 10:08 PM
To: True, Judson
Cc: 'Steve Jones'; 'Amanda Witherell'; 'Allen Grossman'; tim@sfbg.com; 'Bruce Brugmann'
Subject: Immediate Disclosure Request - Clear Channel negotiations

Immediate Disclosure Request

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Kimo Crossman

67.24 e

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(i) personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;

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(iii) any franchise agreements,

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KCrossman 10.05.07.pdf



KCrossman Clear Channel emails 1 of 4.pdf



KCrossman Clear Channel FINAL CONTRACT.pdf



KCrossman Clear Channel FINAL CONTRACT with amendments to Sec 9 10 and 14.pdf



~1525202.pdf



KCrossman 1of24 00433664.pdf



"Kimo Crossman"
<kimo@webnetic.net>
11/18/2007 01:22 AM

To "Robin M Reitzes" <Robin.Reitzes@sfgov.org>,
"Cityattorney" <CityAttorney@sfgov.org>,
<Caroline.Celaya@sfmta.com>, "SOTF" <sof@sfgov.org>,
cc
bcc
Subject RE: Sunshine Complaint Received: #07090_Kimo Crossman
vs SFMTA, SFMTA Commission & City Attorney

Please drop Robin Reitzes and the City Attorney from this complaint.

Please add Judson True from SFMTA and name the members of the SFMTA board.

-----Original Message-----



"Celaya, Caroline"
<Caroline.Celaya@sfmta.com
>

11/19/2007 04:13 PM

To "SOTF" <sotf@sfgov.org>

cc

bcc

Subject Kimo Crossman SOTF Complaint #07090

Dear Mr. Frank Darby:

The SFMTA has received the subject complaint (#07090). The complaint is without merit. We will be submitting further responses to the Complaint Committee and Task Force as appropriate.

Sincerely,

Caroline Celaya

Caroline Celaya
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

Gavin Newsom | Mayor
Rev. Dr. James McCray Jr. | Chairman
Cameron Beach | Director
Shirley Breyer Black | Director
Wil Din | Director
Peter Mezey | Director
Tom Nolan | Director
Leah Shahum | Director
Nathaniel P. Ford, Sr. | Executive Director/CEO

December 4, 2007

Honorable Members, Sunshine Ordinance Task Force Complaint Committee
c/o Frank Darby, Jr., Administrator
Board of Supervisors Clerk's Office
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

RE: Complaint of Kimo Crossman against the Municipal Transportation
Agency Complaint No. 07090

Dear Complaint Committee Members:

For purposes of the Complaint Committee (the "Committee") meeting on December 11, 2007, the Municipal Transportation Agency (the "MTA") submits the following response to Mr. Crossman's complaint filed with the Task Force. The MTA will be submitting an additional response to the Task Force, addressing the merits of Mr. Crossman's complaint, in the event the Committee forwards the complaint to the Task Force.

Jurisdiction of the Task Force

The California Public Records Act (the "Act") establishes a right of access to public records for members of the public. The Sunshine Ordinance (the "Ordinance") expands on the public's right of access to City records and creates the Task Force. The role of the Task Force in a case involving denial of a public records request is to determine whether the law requires the City department to make the records in question available to the public. S.F. Admin. Code section 67.21(e).

While the Task Force has jurisdiction to address a number of issues raised by Mr. Crossman's complaint, there are certain issues as to which it has neither jurisdiction nor authority to find a violation of the Ordinance.

First, Mr. Crossman complains that the MTA should have treated the Clear Channel contract as a franchise agreement. The Ordinance imposes special disclosure requirements for documents relating to negotiations for a lease, permit, or franchise agreement, and some other types of contracts. S.F. Admin. Code section 67.24(e)(3). In response to Mr. Crossman's immediate disclosure request, the MTA provided Mr. Crossman electronic copies of all drafts of the contract exchanged between the parties and all other responsive public records relating to the negotiations of the Clear Channel contract that would have been required if the contract

were a franchise. Characterization of the Clear Channel contract as a franchise agreement would not entitle Mr. Crossman to any records he did not receive. The Ordinance does not give the Task Force the function of determining, in the abstract, whether a particular agreement is a franchise agreement.

Second, Mr. Crossman asserts that draft versions of the Clear Channel contract were not preserved and available for public review ten days before the MTA Board meeting on September 4, 2007. Neither Mr. Crossman nor any other member of the public requested draft versions of the contract prior to the MTA Board meeting. In fact, these documents were available to anyone upon request. On the facts of this case, there is no basis for the Task Force to find a violation of the Ordinance, when neither Mr. Crossman nor anyone else sought to obtain the records in question.

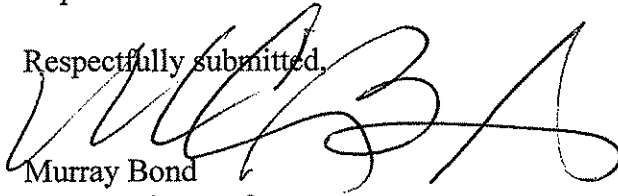
Third, Mr. Crossman's complaint cites the example of the Public Utilities Commission's (the "PUC") posting of certain documents pertaining to negotiation of the Wi-Fi contract. These postings went beyond what the law required. Every department has discretion to permit greater access to records than the law requires. But the Task Force has no jurisdiction to find a violation of the law based on a department's failure to take steps that neither the Public Records Act nor the Ordinance require.

Finally, even if the Task Force were to find that the MTA violated the Ordinance, the Ordinance does not give the Task Force the jurisdiction to invalidate the contract or require the MTA Board to reconsider the Clear Channel contract.

Issues for the Task Force

It is our understanding that one function of the Complaint Committee is to assist the Task Force by formulating the issues to be discussed at the Task Force's hearing on a complaint. In light of the above discussion and the allegations in Mr. Crossman's complaint, we think the issues are as follows: (1) whether the MTA produced copies of all documents exchanged and related to the position of the parties, including draft contracts, in compliance with Section 67.24(e)(3); (2) whether draft versions of the Clear Channel contract that existed during the ten days immediately preceding the MTA Board's September 4th meeting were provided to Mr. Crossman; and (3) whether the MTA properly invoked a fourteen day extension in response to Mr. Crossman's immediate disclosure request.

Respectfully submitted,



Murray Bond
Deputy Director for
Strategic Communications



"Bond, Murray C"
<Murray.Bond@sfmta.com>
12/20/2007 07:56 AM

To "Darby, Frank" <Frank.Darby@sfgov.org>
cc
bcc
Subject Kimo Complaint 07090

History: This message has been forwarded.

As the public notice for the December meeting of the Sunshine Task Force Complaint Committee listed a start time of 4 p.m., and as it actually began at 3 p.m., the subject item was already covered when I arrived shortly before 4 p.m.; therefore, I was unable to hear the discussion. Accordingly, please provide an audio tape of that portion of the proceedings so that I can review it in advance of the January Task Force Meeting. It can be sent to me in room 3232 at One South Van Ness or I will be glad to pick it up. I appreciate your attention to this request.

Murray Bond
Deputy Director
for Strategic Communications
One South Van Ness Avenue, Third Floor
San Francisco, CA 94103-5417
Tel: 415.701.4403
Fax: 415.701.4391
murray.bond@sfmta.com