

Date: January 8, 2008

Item No. 22
File No. 07077

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Complaint by: Allen Grossman v. DA**
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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.

**SUNSHINE ORDINANCE
TASK FORCE**



**City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
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TDD/TTY No. (415) 554-5227**

ORDER OF DETERMINATION

November 27, 2007

November 29, 2007

Allen Grossman
111 – 30th Avenue
San Francisco, CA 94121-1005

Paul Henderson
Office of the District Attorney
850 Bryant Street, 3rd Floor
San Francisco, CA 94103

Re: Complaint #07077 by Allen Grossman against the Office of the District Attorney (DA) for violation of Sections 67.21 (b), 67.25 (a) of the Sunshine Ordinance, and CPRA Section 6253 (b) for alleged failure to respond to an immediate disclosure requested submitted on September 20, 2007.

Based on the information provided to the Task Force from the Complainant Allen Grossman, Respondent Sandip Patel, and hearing public comment, the following Order of Determination is adopted:

The Sunshine Ordinance Task Force finds the District Attorney's Office in violation of Sections 67.21, 67.21-1, 67.25, 67.26, and 67.27 of the Sunshine Ordinance and Government Code Sections 6253 and 6253.9 for failure to provide records, failure to use computer technology to provide access to records, failure to respond in a timely manner, failure to keep withholding to a minimum, and failure to justify withholding. The District Attorney's Office is instructed to provide the responsive documents that have not been provided to Mr. Grossman, including any log from the Arc Soft program that shows the date files were backed-up or archived, within 5 days after the issuance of this Order of Determination.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on November 27, 2007 by the following vote: (Comstock / Goldman)
Ayes: Craven, Knee, Cauthen, Chu, Comstock, Pilpel, Wolfe, Goldman, Williams
Absent: Chan

A handwritten signature in black ink, appearing to read "Doug Comstock".

Doug Comstock, Chair
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney
Sandip Patel, District Attorney's Office



Allen Grossman
<grossman356@mac.com>
12/26/2007 02:33 PM

To SOTF <sotf@sfgov.org>
cc Paul Henderson <Paul.Henderson@sfgov.org>,
Sandip_Patel@sfgov.org
bcc
Subject Complaint #07077 Grossman v. SF District Attorney's Office

Mr. Darby,

Would you please include the attached letter dated today to the Members of the SOTF in the "package" relating to the subject complaint scheduled to be heard at the January 8, 2008 SOTF meeting. Copies of the letter are being sent by this email, and also will be sent by FAX, to Messrs. Henderson and Patel.

Thank You

Allen Grossman



Ltr SOTF 122607.pdf

Allen Grossman
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December 26, 2007

Members,
Sunshine Ordinance Task Force
San Francisco City Hall, Room 244
San Francisco, CA 94102

Re: SOTF Complaint #07077 -- Allen Grossman v. Office of the District Attorney

Dear Members,

This matter is set for hearing at your Special Meeting January 8, 2007 on the referred recommendation of the Compliance and Amendments Committee that "the Office of the District Attorney be found in official misconduct for failure to comply with the Sunshine Ordinance, and failure to comply with the Order of Determination issued by the full Task Force on November 27, 2007; that referral, based on that finding, to the Ethics Commission, Board of Supervisor, and the Attorney General be considered."

After reviewing of the draft minutes and the audiotapes of the December 12, 2007 meeting of the Compliance and Amendments Committee, some aspects of this matter need correction or amplification, so that it is clear exactly what my IDR requested and what the verbal responses from the District Attorney's office have been.

First, I want to clear up some confusion as to what public records (logs) were asked for in my IDR.

According to the draft minutes:

"Member Sheppard confirmed with Mr. Patel that the DA does not have a log, but rather a database, and that providing the information requested would be a breach in security."

"Member Craven confirmed with Mr. Grossman that he is seeking logs showing when e-data was shipped to storage."

"Member Craven said that Mr. Grossman is not looking for the data base."

According to the audio tape:

Member Craven did ask me whether I was looking for "a log or other record showing when electronic media was backed-up and shipped off-site "and I responded mistakenly with a "yes" to

that question, which was partly true. In fact, my IDR did not request **only** that public record; it also asked for "Any and all logs ... (records) documenting the ... the server/drives backed up, back-up "file" names, back-up media identifier, person performing the back-up and, if documented, the indices or other information describing the content, for the two last-performed record back-ups of electronic records that are stored" with GRM. Thus, the purpose was to identify whatever back-up records existed with detail, not just the back-up dates and the dates the boxes containing the back-up tapes were picked up or sent to GRM.

With regard to whether I was requesting the back-up information stored in a database, Member Craven and Member Sheppard had a discussion of the difference between a print out of the public information stored electronically and versus extracting (creating) information from public information stored in an electronic database. Reviewing the tape I am quite sure that I did not say or agree that I was not looking for the database. In fact, the City Attorney's Excel information in the printout I provided to the District Attorney's office came from the City Attorney's electronic database.

Second, with regard to what public records responsive to my IDR that the District Attorney's Office has and which, to date, it has not provided me.

The existence of a database which consists of public information is responsive, at least in part, to my IRD appears to have been conceded by Mr. Patel, on behalf of the District Attorney's office. In the minutes, "Member Sheppard confirmed with Mr. Patel that the DA does not have a log, **but rather a database, and that providing the information requested** would be a breach in security." (Emphasis mine.)

Later, according to the audio tape, Mr. Patel in response to several members' questions, stated that any record produced would have everything on it redacted, with no information disclosed, even the dates and file names. That is the functional equivalent to withholding the entire record. This is contrary to Section 67.26 of the Ordinance, which is quite explicit:

"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 the appropriate justification for withholding required by section 67.27 of this article."

There was some discussion among the members regarding whether the database record maintained by GRM that might show much of the information requested, to which the District Attorney's office would necessarily have access, was a public record. The simple answer is that such information relates to the public's business and is kept for the use of a public agency subject to the CPRA and the Sunshine Ordinance. Having an outside vendor create it or store it for that agency does not change its character as public information.

It is unfortunate that the District Attorney's office has not allowed its IT Manager, Voltaire Almendrala, to appear at any of the hearings on the complaint, as he undoubtedly is in the best position to describe exactly the process by which his Office backs-up, stores and retrieves electronic

records, and what records are maintained to keep track of what is stored and where it can be found when needed.

Perhaps if the District Attorney's Office would answer a few simple questions, we could learn exactly what public records exist in response to my IDR:

1. Does the District Attorney or any one else back-up the District Attorney's' electronic records?
2. If yes, is the back-up made to tapes or other hard media such as discs?
3. If yes, is there any log or record (including a database) anywhere that contains information as to what electronic files or other electronic data or information is backed-up to that hard media?
4. If yes, does the District Attorney's Office have access to that log or record?
5. If yes, does the log or record show what date each back-up was completed?
6. If yes, can the District Attorney's Office retrieve the two entries in that log or record that immediately preceded my IDR dated September 20, 2007?

Maybe those questions can be answered by Mr. Patel or Mr. Almendrala in a written response to you and me before the hearing on January 8, 2008.

Yours Very Truly,



Allen Grossman

Cc: Paul Henderson, Esq.
Sandip Patel