

Date: January 22, 2008

Item No. 7

File No. 07094

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Complaint by: Kimo Crossman v. CAO**
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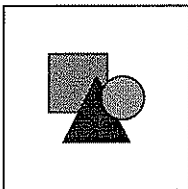
Completed by: Chris Rustom

Date: January 16, 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

January 14, 2008

KIMO CROSSMAN v. THE CITY ATTORNEY'S OFFICE (07094)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

On November 21, 2007, Kimo Crossman made a public records request with Matt Dorsey of the City Attorney's Office for City Attorney Herrera's calendar for December 2007. On November 23, 2007, Kimo Crossman renewed his request and asked that the calendar be posted on the City website. On November 28, 2007, Kimo Crossman stated that compliance on his request is overdue. As of November 29, 2007, Kimo Crossman stated that he did not receive a response from the City Attorney's Office.

THE COMPLAINANT FILES THE COMPLAINT:

On November 29, 2007 Complainant Kimo Crossman filed a complaint against the City Attorney's Office alleging violations of Sections 67.21(b), 67.21(l), and 67.21-1, of the Sunshine Ordinance and possibly California Public Records Action Section 6254.

THE RESPONDENT AGENCY STATES THE FOLLOWING:

In a letter dated December 31, 2008, DCA Miriam Morley acknowledged that the Task Force has jurisdiction to hear the complaint and stated it will supplement this letter with a subsequent letter addressing the merits of the complaint.

APPLICABLE STATUTORY SECTIONS:

1. Sunshine Ordinance § 67.21 addresses general requests for public documents.
2. Sunshine Ordinance § 67.25 addresses Immediate Disclosure Requests.
3. Sunshine Ordinance § 67.26 deals with redaction of records.
4. Sunshine Ordinance § 67.27 addresses legal justification for withholding of records.
5. Sunshine Ordinance § 67.29.5 requires a Department Head to maintain a daily calendar that is a public record.

Memorandum

6. Sunshine Ordinance § 67.29-7 requires a Department Head to maintain and preserve documents and correspondence.
7. Sunshine Ordinance § 67.34 deals with willful failure to comply with the requirements of the Sunshine Ordinance and the comparable state statutes to be Official Misconduct.
8. State Government Code § 6253 addresses requests for public records.
9. State Government Code § 6255 addresses legal justification for withholding of records.

APPLICABLE CASE LAW:

none

ISSUES TO BE DETERMINED**1. FACTUAL ISSUES****A. Uncontested Facts:**

The parties agree to the following facts:

During November 2007, Kimo Crossman requested the City Attorney's calendar for December 2007.

The Task Force must determine what facts are true.

i. Relevant facts in dispute: Whether the information released by the Assessor's Office complied with the Sunshine Ordinance and the State Public Records Act.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

1. What is the statutory authority that justifies non-disclosure of the requested records?

2. LEGAL ISSUES/ LEGAL DETERMINATIONS:

- **Were sections of the Sunshine Ordinance, Brown Act, and/or Public Records Act violated?**

Memorandum

- **Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?**

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 67.25 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

Memorandum

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

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 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

Memorandum

extent of the nonexempt information and suggest alternative sources for the information requested, if available.

Section 67.29-5 provides:

The Mayor, the City Attorney, and every Department Heads shall deep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended by that official, with the exclusion of purely personal or social events at which no city business is discussed and that do not take place a city Offices or at the offices or residences of people who do substantial business with or are otherwise substantially financially affected by actions of the city. For meetings not otherwise publicly recorded, that calendar shall include a general statement of issues discussed Such calendars shall be public records and shall be available to any requester three business days subsequent tot eh calendar entry date.

Section 67.29-7 provides:

The Mayor and all Department Heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance.

Section 67.34 addresses willful failure as official misconduct.

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 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.

Memorandum

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 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.

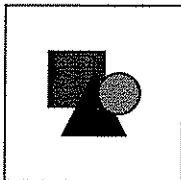
c.) Each agency, upon a request for a copy of records, shall within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination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

d.) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

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.



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

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

December 28, 2007

Sue Cauthen, Chair
Members of the Complaint Committee

Re: Kimo Crossman v. City Attorney's Office (07094)

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 City Attorney's Office.

BACKGROUND

On November 21, 2007, Kimo Crossman made a public records request with Matt Dorsey of the City Attorney's Office for City Attorney Herrera's calendar for December 2007. On November 23, 2007, Kimo Crossman renewed his request and asked that the calendar be posted on the City website. On November 28, 2007, Kimo Crossman stated that compliance on his request is overdue. As of November 29, 2007, Kimo Crossman stated that he did not receive a response from the City Attorney's Office.

COMPLAINT

On November 29, 2007 Complainant Kimo Crossman filed a complaint against the City Attorney's Office 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 Force *does* have jurisdiction over the allegation. The allegations are covered under 67.21 and 67.29-5 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.

Letter to the Complaint Committee

Page 2

December 28, 2007

Section 67.21 generally covers requests for documents and Section 67.29-5 covers the responsibility of every Department Head to keep a daily calendar.

In this case Kimo Crossman alleges that he made several requests for the calendar of City Attorney Dennis Herrera and did not receive a response to his requests. The Task Force has subject matter jurisdiction over this complaint and will have to determine if the City Attorney's Office violated the Ordinance.



"Kimo Crossman"
 <kimo@webnetic.net>
 11/29/2007 09:40 PM

To "SOTF" <sotf@sfgov.org>
 "Matt Dorsey" <Matt.Dorsey@sfgov.org>, "Alexis
 Thompson" <Alexis.Thompson@sfgov.org>,
 <home@prosf.org>, "Allen Grossman"
 bcc
 Subject Sunshine Complaint - City Attorney Herrera Calendar

Submitted on: 11/29/07

Department: City Attorney,
 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: No

Meeting_Date: n/A

Section(s)_Violated:, 67.21 b, 67.21 l, 67.21-1, 6254?

Description: I requested Mr. Herrera's December 2007 calendar and his office
 has not responded to my request even after multiple reminders. So failure to
 respond to a request, and failure to produce public records. I asked for the
 Calendars to be posted on the city website

Please note, I am asking for ALL CALENDARS not just the one stored in Lotus
 Notes

Please include attached email in the records for this complaint.

Hearing: Yes

Date: 11/29/07

Name: Kimo Crossman

Address:

City:

Zip:

Phone:

Email: kimo@webnetic.net

Anonymous:

----- Message from "Kimo Crossman" <kimo@webnetic.net> on Wed, 28 Nov 2007 04:25:33 -0800 -----

To: "Matt Dorsey" <Matt.Dorsey@sfgov.org>, "Cityattorney" <CityAttorney@sfgov.org>,
 "Alexis Thompson" <Alexis.Thompson@sfgov.org>
 <home@prosf.org>, "Allen Grossman" <grossman356@mac.com>, "Wayne Lanier"
 cc: <w_lanier@pacbell.net>, "Amanda Witherell" <amanda@sfbg.com>

Subject: OVERDUE: Immediate Disclosure Request City Attorney December 2007

From: Kimo Crossman [mailto:kimo@webnetic.net]
 Sent: Friday, November 23, 2007 6:01 AM

To: 'Matt Dorsey'; 'Cityattorney'; 'Alexis Thompson'
Cc: 'home@prosf.org'; 'Allen Grossman'; 'Wayne Lanier'; 'Amanda Witherell'
Subject: RE: Immediate Disclosure Request City Attorney December 2007

Rather than emailing me this information, Per 67.21 (1) & 67.21-1 please post this information on the city website..

(1) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

SEC. 67.21-1. POLICY REGARDING USE AND PURCHASE OF COMPUTER SYSTEMS.

(a) It is the policy of the City and County of San Francisco to utilize computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this section. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall program and design these systems to ensure convenient, efficient, and economical public access to records and shall make public records easily accessible over public networks such as the Internet.

(b) Departments purchasing new computer systems shall attempt to reach the following goals as a means to achieve lower costs to the public in connection with the public disclosure of records:

(1) Implementing a computer system in which exempt information is segregated or filed separately from otherwise disclosable information.

(2) Implementing a system that permits reproduction of electronic copies of records in a format that is generally recognized as an industry standard format.

(3) Implementing a system that permits making records available through the largest non-profit, non-proprietary public computer network, consistent with the requirement for security of information.

From: Kimo Crossman [mailto:kimo@webnetic.net]
Sent: Wednesday, November 21, 2007 5:04 PM
To: 'Matt Dorsey'; 'Cityattorney'; 'Alexis Thompson'
Cc: 'home@prosf.org'; 'Allen Grossman'; 'Wayne Lanier'
Subject: Immediate Disclosure Request City Attorney December 2007

Immediate Disclosure Request

Under Sunshine, CPRA and Prop 59, I am requesting all calendars maintained by and for Mr. Herrera for December 2007. This includes personal calendars which contain city business.

Please provide these calendars in their original electronic format or as scanned PDF if only exists in paper format. Please keep redactions to what are minimally legally permitted including a footnote and legal basis for each Redaction.

Please provide calendars in their most detailed hourly, meeting level rather that weekly or

monthly.

Please email this information to me on a daily incremental basis



"Kimo Crossman"
 <kimo@webnetic.net>
 12/13/2007 08:07 PM

To "'SOTF'" <sotf@sfgov.org>
 cc
 bcc
 Subject RE: Respondents re: #07094_Kimo Crossman v. City Attorney

I corrected the names in the email reply - but they should be Matt Dorsey, Alexis Thompson and Dennis Herrera only.

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

From: SOTF [mailto:sotf@sfgov.org]
 Sent: Thursday, December 13, 2007 4:38 PM
 To: Kimo Crossman
 Subject: Respondents re: #07094_Kimo Crossman v. City Attorney

Mr. Crossman,

Please identify the name of the parties(s) of the Department that this complaint relate to so that I can notify the right individuals.

Frank Darby, Administrator
 Sunshine Ordinance Task Force
 1 Dr. Carlton B. Goodlett Place
 City Hall, Room 244
 San Francisco, CA 94102-4689
 SOTF@SFGov.org
 OFC: (415) 554-7724
 FAX: (415) 554-7854

Complete a SOTF Customer Satisfaction Survey by clicking the link below.
http://www.sfgov.org/site/sunshine_form.asp?id=34307

"Kimo Crossman"
 <kimo@webnetic.net>
 t>

12/13/2007 12:52
 PM

To
 "'SOTF'" <sotf@sfgov.org>, "'Robin M Reitzes'" <Robin.Reitzes@sfgov.org>, <Murray.Bond@sfmta.com>, "'John Kennedy'" <John.Kennedy@sfgov.org>

cc
 "'Matt Dorsey'" <Matt.Dorsey@sfgov.org>, "'Alexis Thompson'" <Alexis.Thompson@sfgov.org>, "'Cityattorney'" <CityAttorney@sfgov.org>

Subject
 RE: Sunshine Complaint Received: #07094_Kimo Crossman v. City Attorney (Dennis Herrera)

I apologize some of the names like Robin Reitzes and SFMTA should not be part of this complaint - I have edited it below

Mariam
Morley/CTYATT@CTYATT
12/20/2007 05:00 PM

To Frank Darby/BOS/SFGOV@SFGOV
cc
bcc
Subject Complaint # 07094

Dear Mr. Darby:

The above-referenced complaint lacks merit. The Office of the City Attorney reserves its right to respond further to the merits of the complaint prior to any hearing on the merits.

Sincerely,
Mariam Morley

Mariam M. Morley
Deputy City Attorney
Office of the City Attorney
City Hall, Room 234
San Francisco, CA 94102
Tel: 415-554-4633
Fax: 415-554-4747

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY



DENNIS J. HERRERA
City Attorney

MARIAM MORLEY
Deputy City Attorney

DIRECT DIAL: (415) 554-4633
E-MAIL: mariam.morley@sfgov.org

December 31, 2007

Honorable Members, Sunshine Ordinance Task Force
c/o Frank Darby, Jr., Administrator
Office of the Clerk, Board of Supervisors
Room 244, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

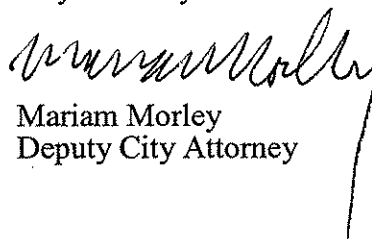
Re: Complaint No. 07094
Kimo Crossman v. City Attorney's Office

Dear Task Force Members:

This letter addresses the jurisdiction of the Task Force over the subject complaint. We acknowledge that the Task Force has jurisdiction. However, in our view, this complaint should be dismissed on the merits. We will supplement this letter with a subsequent letter addressing the merits of the complaint.

Very truly yours,

DENNIS J. HERRERA
City Attorney


Mariam Morley
Deputy City Attorney

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2007 DEC 31 PM 3:17
BY 