Date: February 26, 2008

Item No. 9
File No. 08004, 08005, 08007

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- ☒ **Complaint by: Kimo Crossman v. City Attorney**
- ☐
- ☐
- ☐
- ☐
- ☐
- ☐
- ☐
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Completed by: Frank Darby **Date:** February 20, 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.

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

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

MEMORANDUM

February 15, 2008

KIMO CROSSMAN v. SAN FRANCISCO CITY ATTORNEY'S OFFICE AND THE SUPERVISOR OF RECORDS (08004 through 08007)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

In Complaint Number 08004 Kimo Crossman states the following:

On December 6, 2007, Kimo Crossman made an Immediate Disclosure Request ("IDR") for public records with Alexis Thompson of the City Attorney's Office Kimo Crossman's IDR requested all communications and advice for the period of May 2007 to the present with the City Attorney's Office regarding matter related to Open Government, public records, Sunshine Task Force r privacy as described in Government Code § 67.24(b)(1)(iii) & 67.21(i). Kimo Crossman also requested 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. Kimo Crossman requested the detailed billing records related to the advice and detailed calendars of the attorneys providing the advice.

On December 7, 2007, Alexis Thompson responded and based under Section 6253(c) of the Public Records Action 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.

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

In complaint number 08005, Kimo Crossman states the following:

On November 30 2007, Kimo Crossman made an Immediate Disclosure Request ("IDR") for public records with Alexis Thompson of the City Attorney's Office Kimo Crossman's IDR requested all materials and correspondence with or about or provided to Harrison Sheppard, Task Force member. Kimo Crossman requested the attorney billing records and calendars of anyone in the CAO who has interacted with him.

Memorandum

On December 4, 2007, Alexis Thompson responded and based under Section 6253(c) of the Public Records Action 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.

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

In complaint number 08006, Kimo Crossman states the following:

On November 30 2007, Kimo Crossman made an Immediate Disclosure Request ("IDR") for public records with Matt Dorsey of the City Attorney's Office Kimo Crossman's IDR requested all materials related to the 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 Action 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.

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

In complaint number 08007, Kimo Crossman states the following:

On December 4, 2007, Kimo Crossman made an Immediate Disclosure Request ("IDR") for public records with Alexis Thompson of the City Attorney's Office Kimo Crossman's IDR requested all communications and advice provided to Angela Calvillo, Clerk of the Board regarding matter related to Open Government, public records, Sunshine Task Force or privacy as described in Government Code Section 67.24(b)(1)(iii) & 67.21(i). In addition, Kimo Crossman requested the 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.

On December 6, 2007, Alexis Thompson responded and based under Section 6253(c) of the Public Records Action 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.

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

COMPLAINANT FILES COMPLAINT

On November 6, 2007, Kimo 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. State Government Code Sections 6253, and 6255.

APPLICABLE STATUTORY SECTIONS:

1. California Constitution, Article I, Section 3 that states the general principals of public records and public meetings.
2. Sunshine Ordinance Section 67.1 that addresses Findings and Purpose.
3. Sunshine Ordinance, San Francisco Administrative Code Section 67.21 addresses general requests for public documents including records in electronic format.
4. Sunshine Ordinance, San Francisco Administrative Code Section 67.22 deals with the release of oral public information.
5. Sunshine Ordinance, San Francisco Administrative Code Section. 67.26 deals with withholding kept to a minimum.
6. Sunshine Ordinance, San Francisco Administrative Code Section. 67.27 deals with justification for withholding.
7. Sunshine Ordinance § 67.29.5 requires a Department Head to maintain a daily calendar that is a public record.
8. 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.
9. California Public Records Act, Government Code Section 6253 deals with public records open to inspection, agency duties, and time limits.

10. California Public Records Act, Government Code Section 6255 deals with 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:

- Crossman submitted requests for a number of documents from the City Attorney's Office and also requested 15 minutes time to speak with DCA Buck Delventhal the head of the Government Team of the City Attorney's Office.
- The City Attorney's Office requested an extension of time to comply with the requests.
- Kimo Crossman appealed to the Supervisor of Records at the City Attorney's Office when the requested records were not provided.
- The Supervisor of Records responded by saying that she could not render an opinion until the City Attorney's Office completes their review of the records.

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

- Whether the City Attorney's Office complied with the public records request.
- Whether under 67.22 of the Sunshine Ordinance, the head of the Government Team of the City Attorney's Office is required to answer requests for oral public information.

- Whether the Supervisor of Records could withhold her opinion on the response by the City Attorney's Office until the Office completed a review of its records.

2. QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

a.) Is DCA Buck Delventhal required to provide 15 minutes of his time to Kimo Crossman? (Section 67.22 provides that no employee shall be required to respond to an inquiry or inquiries from an individual if it would take the employee more than fifteen minutes to obtain the information responsive to the inquiry or inquiries).

3. LEGAL ISSUES/ LEGAL DETERMINATIONS:

- **Were sections of the Sunshine Ordinance (Section 67.21), Brown Act, and/or Public Records Act were violated by the City Attorney's Office or the Supervisor of Records?**
- **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

CALIFORNIA STATE CONSTITUTION, ARTICLE I, SECTION 1

§1 Inalienable rights

> All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004 ARTICLE I, SECTION 3

§3 Openness in Government

> a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely ton consult for the common good.
>
> b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
>
> 2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protect by the limitation and the need for protecting that interest.
>
> 3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.
>
> 4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided by Section 7.
>
> 5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.
>
> 6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the

Legislature, and its employees, committee, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions: nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

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

Section 67.1 addresses Findings and Purpose

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

(a) Government's duty is to serve the public, reaching its decisions in full view of the public.

(b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.

(c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.

(d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.

(e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force can protect the public's interest in open government.

(f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.

(g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.

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.

c.) A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt form disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

…

k.) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Pubic Records Act Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirement provided in this ordinance.

l.) 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 t 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.

Section 67.22 provides:

Release of oral public information shall be accomplished as follows:

a) Every department head shall designate a person or person knowledgeable about the affairs of the department, to provide information, including oral information, to the public about the department's operations, plans, policies and positions. The department head may designate himself or herself for this assignment, but in any event shall arrange that an alternate be available for this function during the absence of the person assigned primary responsibility. If a department has multiple bureaus or division, the department may designate a person or person for each bureau or division to provide this information.

b) The role of the person or persons so designated shall be to provide information on as timely and responsive a basis as possible to those members of the public who are not requesting information from a specific person. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasions, and confined to accurate information not confidential by law.

c) No employee shall be required to respond to any inquiry or inquiries from an individual if it would take the employee more than fifteen minutes to obtain the information responsive to the inquiry or inquiries.

Memorandum

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

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.

Memorandum

Sunshine Ordinance Section 67.1 provides:

> g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public has the right to an open and public process.

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 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.

Memorandum

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.

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

ERNEST H. LLORENTE
Deputy City Attorney

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

February 4, 2008

Sue Cauthen, Chair
Members of the Complaint Committee

Re: Kimo Crossman v. City Attorney's Office (08004)

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 December 6, 2007, Kimo Crossman made an Immediate Disclosure Request ("IDR") for public records with Alexis Thompson of the City Attorney's Office Kimo Crossman's IDR requested all communications and advice for the period of May 2007 to the present with the City Attorney's Office regarding matter related to Open Government, public records, Sunshine Task Force r privacy as described in Government Code § 67.24(b)(1)(iii) & 67.21(i). Kimo Crossman also requested 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. Kimo Crossman requested the detailed billing records related to the advice and detailed calendars of the attorneys providing the advice.

On December 7, 2007, Alexis Thompson responded and based under Section 6253(c) of the Public Records Action 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.

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

On November 29, 2007 Complainant Kimo Crossman filed a complaint against the City Attorney's Office alleging violations sections 67.1; 67.25(d), 67.26, 67.21.(a), (b), (i), 67.24(d), 67.34 of the Sunshine Ordinance and State Government Code Sections 6253 and 6255.

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 67.25 of the Ordinance.

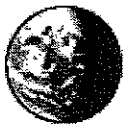
DISCUSSION AND ANALYSIS

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 67.25-5 covers Immediate Disclosure Requests

In this case Kimo Crossman alleges that he made requests for the communications, advice, billing records and calendars involving the City Attorney's Office and the CAO on Sunshine Ordinance and State Public records matters and alleges that he did not receive them. 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 <kimo@webnetic.net>
Sent by:
kimocrossman@gmail.com

01/10/2008 06:23 PM

Please respond to
kimo@webnetic.net

To SOTF <sotf@sfgov.org>, cityattorney@sfgov.org, "Paula Jesson" <paula.jesson@sfgov.org>

cc

bcc

Subject SOTF Complaint District Attorney Sunshine Communications with City Attorney

Submitted on: 1/10/2007

Department: City Attorney

Contacted: Matt Dorsey, Paula Jesson, Alexis Thompson

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: 67.1, 67.25 d, 67.27,67.26, 67.21(a),(b),(i), 67.24 (d)
67.34, Government Code 6253, 6255

Description: I requested communications with between the City Attorney and the District Attorney on Sunshine matters, detailed billing records for this advice and calendars of City Attorneys who advised even if no billing records were created. After a 14 day extension not additional response was provided by the office, no records have been provided and not incrementally. No notification that my requests were being prioritized. Silence.

On 1/3 I appealed to the Supervisor of Records for determination of 4 requests which were significantly overdue even after extensions at the City Attorney's office. All of these requests were reasonable, for example I requested the communications between the District Attorney and the City Attorney re Sunshine Matters for a period. Another one: all Open Government advice provided to the new Clerk of the Board, or any records of communications with Harrison Sheppard.

Ms. Jesson, the Supervisor or Records claims I have to wait until the city attorney office completes their review of records, that is not correct, if they have not provided a response besides the extension they have failed to comply. And an appeal is valid.

Ms. Jesson does not understand that law. "If the custodian refuses, fails to comply, or incompletely complies" That has occurred, a determination must be processed within ten days of my appeal request.

She apparently is claiming that the office of 200 lawyers plus staff has to prioritize my requests even though I was not notified that they were prioritized, nor the order they were prioritized and

she has provided no legal basis for prioritizing my requests.

Ms Jesson:
You submitted five petitions on January 3, 2008. Four of those relate to requests for records made to this office. This office has not yet responded to this request. As you know, because of the volume of your public records requests to this office, it has become necessary to prioritize them. When this office has completed its review and determined that a record that you have requested falls within a protected category and should be withheld, you may appeal the denial to the Supervisor of Records. Until that time, your appeal is premature

67.21

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person"s request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

Please see attached email for more details

Hearing: Yes

Date: 1/10/08

Name: Kimo Crossman

Address:

City:

Zip:

Phone:

Email: kimo@webnetic.net

Anonymous:

---------- Forwarded message ----------
From: **kimo** <kimo@webnetic.net >
Date: Jan 3, 2008 9:16 PM
Subject: APPEAL: immediate disclosure request communications with da about sunshine matters
To: Alexis Thompson <Alexis.Thompson@sfgov.org >, "home@prosf.org" <home@prosf.org>, Allen Grossman <grossman356@mac.com>, cityattorney@sfgov.org, Matt Dorsey < Matt.Dorsey@sfgov.org>, kimo <kimo@webnetic.net>, Paula Jesson < paula.jesson@sfgov.org >

Ms. Jesson

This is an appeal for these records

On Dec 31, 2007 11:25 AM, kimo <kimo@webnetic.net> wrote:
>
>
> On Dec 27, 2007 6:24 PM, kimo <kimo@webnetic.net> wrote:
>>
>>
>>
>> On Dec 26, 2007 5:06 PM, kimo < kimo@webnetic.net> wrote:
>>
>>>
>>>
>>>
>>> On Dec 10, 2007 2:45 PM, Alexis Thompson <Alexis.Thompson@sfgov.org >
> wrote:
>>>
>>>>
>>>> Dear Kimo:
>>>>
>>>> Pursuant to Section 6253 (c) of the Public Records Act and Section
> 67.25 (b) of the Sunshine Ordinance, we are invoking an extension of time to
> respond to your public records request below in order to give us an
> adequate amount of time to search for documents that may be responsive to
> your request. We are hopeful that we will have a response for you in less
> than fourteen days.
>>>>
>>>> Best,
>>>> ALEXIS THOMPSON
>>>> Deputy Press Secretary
>>>>
>>>>
> ----------

>>>> OFFICE OF CITY ATTORNEY DENNIS HERRERA
>>>> San Francisco City Hall, Room 234
>>>> 1 Dr. Carlton B. Goodlett Place
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>>>>
>>>> (415) 554-4653 Direct
>>>> (415) 554-4700 Reception
>>>> (415) 554-4715 Facsimile
>>>> (415) 554-6770 TTY
>>>>
>>>> http://www.sfgov.org/cityattorney/
>>>>
>>>> _____
>>>>
>>>> http://www.sfgov.org/cityattorney/
>>>> ----- Forwarded by Alexis Thompson/CTYATT on 12/07/2007 02:38 PM -----
>>>>
>>>> "Kimo Crossman" <kimo@webnetic.net>
>>>>
>>>> 12/06/2007 05:00 PM
>>>>
>>>> To "'Cityattorney'" <CityAttorney@sfgov.org>, "'Alexis Thompson'"
> < Alexis.Thompson@sfgov.org>
>>>>
>>>> cc "'Allen Grossman'" <grossman356@mac.com>, < home@prosf.org>
>>>>
>>>> Subject immediate disclosure request communications with da about
> sunshine matters
>>>>
>>>>
>>>>
>>>>
>>>>
>>>> Immediate Disclosure Request
>>>>
>>>> City Attorney:
>>>>
>>>> Please provide all communications and advice for the period of May
> 2007- Present with the San Francisco District Attorney's office regarding
> matters related to Open Government, public records, Sunshine Taskforce or
> privacy as described in Govt. Code 67.24 (b) (1) (iii) & 67.21 i:
>>>>
>>>> (iii) 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.
> > > > (i) The San Francisco City Attorney's office shall act to protect and
> secure the rights of the people of San Francisco to access public
> information and public meetings and shall not act as legal counsel for any
> city employee or any person having custody of any public record for purposes
> of denying access to the public. The City Attorney may publish legal
> opinions in response to a request from any person as to whether a record or
> information is public. All communications with the City Attorney's Office
> with regard to this ordinance, including petitions, requests for opinion,
> and opinions shall be public records
> > > > Also please provide the detailed attorney billing records related to
> this advice (Sample attached).
> > > >
> > > > Lastly please provide detailed calendars for all attorneys who have
> advised the District Attorney on these matters whether or not the calendar
> shows the meeting and whether or not attorney billing records were created
> as part of the advice.
> > > >
> > > > Please email information in its original electronic format on a daily
> incremental basis to kimo@webnetic.net if it exists only in paper form
> please provide it as scanned PDF, if information is redacted please footnote
> with express legal exemptions.
> > > >
> > > > Please provide information on a daily incremental basis
> > > >
> > >
> > >
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>
>

"Kimo Crossman"
<kimo@webnetic.net>

02/05/2008 06:56 AM

Please respond to
<kimo@webnetic.net>

To <sotf@sfgov.org>, <paula.jesson@sfgov.org>, <cityattorney@sfgov.org>, <Alexis.Thompson@sfgov.org>, <Matt.Dorsey@sfgov.org>

cc "'Allen Grossman'" <grossman356@mac.com>, <home@prosf.org>

bcc

Subject Amendment to complaints #08004-08007

Please add the additional code sections to each complaint

Government Code 6257 for failure to respond "Promptly"
67.21 (a) for failure to respond without "unreasonable delay"
67.21 (d) for failure to issue a determination by the Supervisor of Records in ten days
67.25 (b) for invalid invocation of extension of time for easily accessible billing reports and calendars
67.26 for assertion that work effort could be queued "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."

For 08006 only 67.22 failure to provide Oral Information

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

MATT DORSEY
Public Information Officer

February 5, 2008

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. 08004

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. We will address the merits of the complaint at a later time.

Very truly yours,

DENNIS J. HERRERA
City Attorney

MATT DORSEY
Public Information Officer

CITY HALL · 1 DR. CARLTON B. GOODLETT PLACE, ROOM 234 · SAN FRANCISCO, CALIFORNIA 94102-0917
RECEPTION: (415) 554-4700 · FACSIMILE: (415) 554-4747

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

ALEXIS P. THOMPSON
Deputy Press Secretary

DIRECT DIAL: (415) 554-4653
E-MAIL: alexis.trucham@sfgov.org

February 19, 2008

Re: Kimo Crossman v. City Attorney, Complaints #08004-08007

Dear Honorable Members of the Sunshine Ordinance Task Force:

This correspondence serves to address the most recent complaints filed by Mr. Kimo Crossman against the Office of the City Attorney to the Sunshine Ordinance Task Force. The complaints that are slated to be before the Task Force are #08004, #08005, #08006, and #08007.

As the Task Force is aware by receipt of correspondence between our office and Mr. Crossman, in a letter written by City Attorney Public Information Officer Matt Dorsey on January 12, 2006, Mr. Crossman's requests for information have oftentimes placed vast burdens on the resources of our office as well as other city departments. For this reason, the City Attorney informed Mr. Crossman that due to his unprecedented number of detailed requests, some requiring a voluminous amount of material to be examined and reviewed for protected information, our office deemed it necessary to limit the time spent responding to Mr. Crossman's requests to allow us to dutifully perform our other work. We advised our clients to do the same.

In the aforementioned letter and in subsequent correspondence with Mr. Crossman to which the Task Force was made aware, the City Attorney's Office also made clear that before devoting significant resources to a new request made by Mr. Crossman, we would complete our responses to his outstanding requests. We have advised our clients to do the same. When setting forth this process to best handle Mr. Crossman's requests, while reasonably attempting to protect City resources, we realized that this would result in missed deadlines. In this case we received a number of requests from Mr. Crossman during a relatively short time frame and since then we have also had to expend considerable resources responding to his complaints before the Task Force, at least one petition to the Supervisor of Records, and providing advice to client departments pertaining to his requests of them.

The City Attorney's Office takes very seriously its obligations under the Sunshine Ordinance and other public information laws. At the same time we owe a duty to the more than 750,000 other residents of this City to fulfill all of our duties, which include responding to other individual requests for public records. In the past two years, we believe that we have made progress in trying to fulfill Mr. Crossman's requests in a timely manner without compromising our services to every other San Franciscan. It is my hope that the Task Force recognizes the judiciousness with which we have sought to balance our competing obligations.

Very truly yours,

Alexis Thompson
Deputy Press Secretary

CITY HALL · 1 DR. CARLTON B. GOODLETT PLACE, SUITE 234 · SAN FRANCISCO, CALIFORNIA 94102-0917
RECEPTION: (415) 554-4700 · FACSIMILE: (415) 554-4715

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

ERNEST H. LLORENTE
Deputy City Attorney

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

February 4, 2008

Sue Cauthen, Chair
Members of the Complaint Committee

Re: Kimo Crossman v. City Attorney's Office (08005)

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 30 2007, Kimo Crossman made an Immediate Disclosure Request ("IDR") for public records with Alexis Thompson of the City Attorney's Office Kimo Crossman's IDR requested all materials and correspondence with or about or provided to Harrison Sheppard, Task Force member. Kimo Crossman requested the attorney billing records and calendars of anyone in the CAO who has interacted with him.

On December 4, 2007, Alexis Thompson responded and based under Section 6253(c) of the Public Records Action 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.

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

On January 10, 2008, Complainant Kimo Crossman filed a complaint against the City Attorney's Office alleging violations sections 67.1; 67.25(d), 67.26, 67.21.(a), (b), (i), 67.24(d), 67.34 of the Sunshine Ordinance and State Government Code Sections 6253 and 6255.

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 67.25 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 67.25-5 covers Immediate Disclosure Requests

In this case Kimo Crossman alleges that he made requests for the communications, advice, billing records and calendars involving the City Attorney's Office and the CAO on Sunshine Ordinance and State Public records matters and alleges did not receive them. 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 <kimo@webnetic.net>
Sent by:
kimocrossman@gmail.com

01/10/2008 06:36 PM

Please respond to
kimo@webnetic.net

To SOTF <sotf@sfgov.org>, cityattorney@sfgov.org

cc

bcc

Subject SOTF Complaint City Attorney interactions with Harrison Sheppard

Submitted on: 1/10/2007

Department: City Attorney

Contacted: Matt Dorsey, Paula Jesson, Alexis Thompson

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: 67.1, 67.25 d, 67.27,67.26, 67.21(a),(b),(i), 67.21 (d), 67.24 (b) (1) (iii) 67.34, Government Code 6253, 6255

Description: I requested at the City Attorney with, about or provided to Harrison Sheppard on Sunshine matters, detailed billing records and calendars of staff at the City Attorney office who interacted with him even if no billing records were created. After a 14 day extension no additional response was provided by the office, no records have been provided and not incrementally. No notification that my requests were being prioritized. Silence.

On 1/3 I appealed to the Supervisor of Records for determination of 4 requests which were significantly overdue even after extensions at the City Attorney's office. All of these requests were reasonable, for example I requested the communications between the District Attorney and the City Attorney re Sunshine Matters for a period. Another one: all Open Government advice provided to the new Clerk of the Board, or any records of communications with Harrison Sheppard.

Ms. Jesson, the Supervisor or Records claims I have to wait until the city attorney office completes their review of records, that is not correct, if they have not provided a response besides the extension they have failed to comply. And an appeal is valid.

Ms. Jesson does not understand that law. "If the custodian refuses, fails to comply, or incompletely complies" That has occurred, a determination must be processed within ten days of my appeal request.

She apparently is claiming that the office of 200 lawyers plus staff has to prioritize my requests even though I was not notified that they were prioritized, nor the order they were prioritized and

she has provided no legal basis for prioritizing my requests.

Ms Jesson says:
You submitted five petitions on January 3, 2008. Four of those relate to requests for records made to this office. This office has not yet responded to this request. As you know, because of the volume of your public records requests to this office, it has become necessary to prioritize them. When this office has completed its review and determined that a record that you have requested falls within a protected category and should be withheld, you may appeal the denial to the Supervisor of Records. Until that time, your appeal is premature

67.21

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person"s request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

Please see attached email for more details

Hearing: Yes

Date: 1/10/08

Name: Kimo Crossman

Address:

City:

Zip:

Phone:

Email: kimo@webnetic.net

Anonymous:

---------- Forwarded message ----------

From: **kimo** <kimo@webnetic.net>
Date: Jan 3, 2008 9:14 PM
Subject: APPEAL: immediate disclosure request - interactions with Harrison Sheppard
To: Alexis Thompson <Alexis.Thompson@sfgov.org>, Allen Grossman <grossman356@mac.com>, cityattorney@sfgov.org, "home@prosf.org" <home@prosf.org>, Matt Dorsey <Matt.Dorsey@sfgov.org>, kimo <kimo@webnetic.net>, Paula Jesson <paula.jesson@sfgov.org>

Ms. Jesson

This is an appeal for these records

On Dec 31, 2007 11:27 AM, kimo <kimo@webnetic.net> wrote:
>
>
> On Dec 27, 2007 6:23 PM, kimo <kimo@webnetic.net> wrote:
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>> On Dec 26, 2007 5:08 PM, kimo <kimo@webnetic.net> wrote:
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>>>
>>> On Dec 4, 2007 4:49 PM, Alexis Thompson <Alexis.Thompson@sfgov.org>
> wrote:
>>>
>>>>
>>>> Dear Kimo,
>>>>
>>>> Pursuant to Section 6253 (c) of the Public Records Act and Section
> 67.25 (b) of the Sunshine Ordinance, we are invoking an extension of time to
> respond to your public records request below in order to consult with
> another City department or departments. We are hopeful that we will have a
> response for you in less than fourteen days.
>>>>
>>>> Best,
>>>> ALEXIS THOMPSON
>>>> Deputy Press Secretary
>>>>
>>>>
> ---
>>>> OFFICE OF CITY ATTORNEY DENNIS HERRERA
>>>> San Francisco City Hall, Room 234

>>>> 1 Dr. Carlton B. Goodlett Place
>>>> San Francisco, California 94102-4682
>>>>
>>>> (415) 554-4653 Direct
>>>> (415) 554-4700 Reception
>>>> (415) 554-4715 Facsimile
>>>> (415) 554-6770 TTY
>>>>
>>>> http://www.sfgov.org/cityattorney/
>>>>
>>>>
>>>>
>>>> "Kimo Crossman" <kimo@webnetic.net>
>>>>
>>>> 11/30/2007 05:58 PM
>>>>
>>>> To "'Cityattorney'" <CityAttorney@sfgov.org>, "'Matt Dorsey'"
> <Matt.Dorsey@sfgov.org>, "'Alexis Thompson'" <Alexis.Thompson@sfgov.org>,
> <info@whatsrightwithlawyers.com >, "'Harrison Sheppard'" <hjslaw@jps.net>
>>>>
>>>> cc "'Christian Holmer'" <mail@csrsf.com>, "'Allen Grossman'"
> <grossman356@mac.com>
>>>>
>>>> Subject immediate disclosure request - interactions with Harrison
> Sheppard
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>>>>
>>>> Immediate disclosure request
>>>>
>>>> Please provide all materials and correspondence with or about or
> provided to Harrison Sheppard the new SOTF member.
>>>>
>>>> I am also requesting the attorney billing records/timesheets for
> anyone in your office who as meet with him.
>>>>
>>>> I am requesting the calendars of anyone in your office who has
> interacted with him in any manner whether or not the calendar shows evidence
> of the meeting or not.
>>>>

> > > > Please provide information on a daily incremental basis, in its
> original electronic format and convert paper only information to scanned
> PDF.
> > > >
> > > > Please email info to kimo@webnetic.net
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"Kimo Crossman"
<kimo@webnetic.net>
02/05/2008 06:56 AM
Please respond to
<kimo@webnetic.net>

To <sotf@sfgov.org>, <paula.jesson@sfgov.org>, <cityattorney@sfgov.org>, <Alexis.Thompson@sfgov.org>, <Matt.Dorsey@sfgov.org>

cc "'Allen Grossman'" <grossman356@mac.com>, <home@prosf.org>

bcc

Subject Amendment to complaints #08004-08007

Please add the additional code sections to each complaint

Government Code 6257 for failure to respond "Promptly"
67.21 (a) for failure to respond without "unreasonable delay"
67.21 (d) for failure to issue a determination by the Supervisor of Records in ten days
67.25 (b) for invalid invocation of extension of time for easily accessible billing reports and calendars
67.26 for assertion that work effort could be queued "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."

For 08006 only 67.22 failure to provide Oral Information

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

MATT DORSEY
Public Information Officer

February 5, 2008

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. 08005

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. We will address the merits of the complaint at a later time.

Very truly yours,

DENNIS J. HERRERA
City Attorney

MATT DORSEY
Public Information Officer

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2008 FEB -5 AM 11:22
BY

CITY HALL · 1 DR. CARLTON B. GOODLETT PLACE, ROOM 234 · SAN FRANCISCO, CALIFORNIA 94102-0917
RECEPTION: (415) 554-4700 · FACSIMILE: (415) 554-4747

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

ALEXIS P. THOMPSON
Deputy Press Secretary

DIRECT DIAL: (415) 554-4653
E-MAIL: alexis.truchan@sfgov.org

February 19, 2008

Re: Kimo Crossman v. City Attorney, Complaints #08004-08007

Dear Honorable Members of the Sunshine Ordinance Task Force:

This correspondence serves to address the most recent complaints filed by Mr. Kimo Crossman against the Office of the City Attorney to the Sunshine Ordinance Task Force. The complaints that are slated to be before the Task Force are #08004, #08005, #08006, and #08007.

As the Task Force is aware by receipt of correspondence between our office and Mr. Crossman, in a letter written by City Attorney Public Information Officer Matt Dorsey on January 12, 2006, Mr. Crossman's requests for information have oftentimes placed vast burdens on the resources of our office as well as other city departments. For this reason, the City Attorney informed Mr. Crossman that due to his unprecedented number of detailed requests, some requiring a voluminous amount of material to be examined and reviewed for protected information, our office deemed it necessary to limit the time spent responding to Mr. Crossman's requests to allow us to dutifully perform our other work. We advised our clients to do the same.

In the aforementioned letter and in subsequent correspondence with Mr. Crossman to which the Task Force was made aware, the City Attorney's Office also made clear that before devoting significant resources to a new request made by Mr. Crossman, we would complete our responses to his outstanding requests. We have advised our clients to do the same. When setting forth this process to best handle Mr. Crossman's requests, while reasonably attempting to protect City resources, we realized that this would result in missed deadlines. In this case we received a number of requests from Mr. Crossman during a relatively short time frame and since then we have also had to expend considerable resources responding to his complaints before the Task Force, at least one petition to the Supervisor of Records, and providing advice to client departments pertaining to his requests of them.

The City Attorney's Office takes very seriously its obligations under the Sunshine Ordinance and other public information laws. At the same time we owe a duty to the more than 750,000 other residents of this City to fulfill all of our duties, which include responding to other individual requests for public records. In the past two years, we believe that we have made progress in trying to fulfill Mr. Crossman's requests in a timely manner without compromising our services to every other San Franciscan. It is my hope that the Task Force recognizes the judiciousness with which we have sought to balance our competing obligations.

Very truly yours,

Alexis Thompson
Deputy Press Secretary

CITY HALL · 1 DR. CARLTON B. GOODLETT PLACE, SUITE 234 · SAN FRANCISCO, CALIFORNIA 94102-0917
RECEPTION: (415) 554-4700 · FACSIMILE: (415) 554-4715

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

ERNEST H. LLORENTE
Deputy City Attorney

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

February 4, 2008

Sue Cauthen, Chair
Members of the Complaint Committee

Re: Kimo Crossman v. City Attorney's Office (08007)

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 December 4, 2007, Kimo Crossman made an Immediate Disclosure Request ("IDR") for public records with Alexis Thompson of the City Attorney's Office Kimo Crossman's IDR requested all communications and advice provided to Angela Calvillo, Clerk of the Board regarding matter related to Open Government, public records, Sunshine Task Force or privacy as described in Government Code Section 67.24(b)(1)(iii) & 67.21(i). In addition, Kimo Crossman requested the 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.

On December 6, 2007, Alexis Thompson responded and based under Section 6253(c) of the Public Records Action 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.

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

On January 10, 2008, Complainant Kimo Crossman filed a complaint against the City Attorney's Office alleging violations sections 67.1; 67.25(d), 67.26, 67.21.(a), (b), (i), 67.24(d), 67.34 of the Sunshine Ordinance and State Government Code Sections 6253 and 6255.

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 67.25 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 67.25-5 covers Immediate Disclosure Requests

In this case Kimo Crossman alleges that he made requests for the communications, advice, billing records and calendars involving the CityAttorney's Office and the Clerk of the Board of Supervisors on Sunshine Ordinance and State Public records matters and did not receive them. 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 <kimo@webnetic.net>
Sent by:
kimocrossman@gmail.com

01/10/2008 06:29 PM

Please respond to kimo@webnetic.net

To SOTF <sotf@sfgov.org>, cityattorney@sfgov.org

cc

bcc

Subject Sunshine Complaint- Clerk of the Board - Attorney advice on public records and SOTF matters

Submitted on: 1/10/2007

Department: City Attorney

Contacted: Matt Dorsey, Paula Jesson, Alexis Thompson

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: 67.1, 67.25 d, 67.27,67.26, 67.21(a),(b),(i), 67.21 (d), 67.24 (b) (1) (iii) 67.34, Government Code 6253, 6255

Description: I requested communications with between the City Attorney and the Clerk of the Board on Sunshine matters, detailed billing records for this advice and calendars of City Attorneys who advised even if no billing records were created. After a 14 day extension no additional response was provided by the office, no records have been provided and not incrementally. No notification that my requests were being prioritized. Silence.

On 1/3 I appealed to the Supervisor of Records for determination of 4 requests which were significantly overdue even after extensions at the City Attorney's office. All of these requests were reasonable, for example I requested the communications between the District Attorney and the City Attorney re Sunshine Matters for a period. Another one: all Open Government advice provided to the new Clerk of the Board, or any records of communications with Harrison Sheppard.

Ms. Jesson, the Supervisor or Records claims I have to wait until the city attorney office completes their review of records, that is not correct, if they have not provided a response besides the extension they have failed to comply. And an appeal is valid.

Ms. Jesson does not understand that law. "If the custodian refuses, fails to comply, or incompletely complies" That has occurred, a determination must be processed within ten days of my appeal request.

She apparently is claiming that the office of 200 lawyers plus staff has to prioritize my requests

even though I was not notified that they were prioritized, nor the order they were prioritized and she has provided no legal basis for prioritizing my requests.

Ms Jesson:
You submitted five petitions on January 3, 2008. Four of those relate to requests for records made to this office. This office has not yet responded to this request. As you know, because of the volume of your public records requests to this office, it has become necessary to prioritize them. When this office has completed its review and determined that a record that you have requested falls within a protected category and should be withheld, you may appeal the denial to the Supervisor of Records. Until that time, your appeal is premature

67.21

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person"s request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

Please see attached email for more details

Hearing: Yes

Date: 1/10/08

Name: Kimo Crossman

Address:

City:

Zip:

Phone:

Email: kimo@webnetic.net

Anonymous:

---------- Forwarded message ----------
From: **kimo** <kimo@webnetic.net >
Date: Jan 3, 2008 9:15 PM
Subject: APPEAL: Immediate Disclosure Request - Clerk of the Board - Attorney advice on public records and SOTF matters
To: Alexis Thompson < Alexis.Thompson@sfgov.org>, Matt Dorsey <Matt.Dorsey@sfgov.org >, cityattorney@sfgov.org, Allen Grossman < grossman356@mac.com>, "home@prosf.org" < home@prosf.org>, kimo <kimo@webnetic.net>, Paula Jesson < paula.jesson@sfgov.org>

Ms. Jesson:

This is an appeal for these records

On Dec 31, 2007 11:26 AM, kimo <kimo@webnetic.net > wrote:
>
>
> On Dec 27, 2007 6:23 PM, kimo <kimo@webnetic.net> wrote:
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> > On Dec 26, 2007 5:07 PM, kimo < kimo@webnetic.net> wrote:
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> > >
> > > On Dec 6, 2007 3:54 PM, Alexis Thompson < Alexis.Thompson@sfgov.org>
> wrote:
> > >
> > > >
> > > > Dear Kimo,
> > > >
> > > > Pursuant to Section 6253 (c) of the Public Records Act and Section
> 67.25 (b) of the Sunshine Ordinance, we are invoking an extension of time to
> respond to your public records request below in order to consult with
> another City department. We are hopeful that we will have a response for
> you in less than fourteen days.
> > > >
> > > > Best,
> > > > ALEXIS THOMPSON
> > > > Deputy Press Secretary
> > > >
> > > >

> ----------
>>>> OFFICE OF CITY ATTORNEY DENNIS HERRERA
>>>> San Francisco City Hall, Room 234
>>>> 1 Dr. Carlton B. Goodlett Place
>>>> San Francisco, California 94102-4682
>>>>
>>>> (415) 554-4653 Direct
>>>> (415) 554-4700 Reception
>>>> (415) 554-4715 Facsimile
>>>> (415) 554-6770 TTY
>>>>
>>>> http://www.sfgov.org/cityattorney/
>>>>
>>>>
>>>>
>>>> "Kimo Crossman" <kimo@webnetic.net>
>>>>
>>>> 12/04/2007 05:46 PM
>>>>
>>>> To "'Cityattorney'" <CityAttorney@sfgov.org>, "'Alexis Thompson'"
> < Alexis.Thompson@sfgov.org>, "'Matt Dorsey'" <Matt.Dorsey@sfgov.org>,
> <Cheryl.Adams@sfgov.org >, "'Paul Zarefsky'" <Paul.Zarefsky@sfgov.org>,
> <linda.ross@sfgov.org>
>>>>
>>>> cc "'Allen Grossman'" <grossman356@mac.com>, <home@prosf.org>, "'Peter
> Warfield'" < Libraryusers2004@yahoo.com>, <Pmonette-shaw@earthlink.net>,
> <rak0408@earthlink.net >, < Dougcoms@aol.com>
>>>>
>>>> Subject Immediate Disclosure Request - Clerk of the Board - Attorney
> advice on public records and SOTF matters
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>>>> Immediate Disclosure Request
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>>>> City Attorney:
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>>>> Please provide all communications and advice provided to Angela
> Calvillo ,Clerk of the Board regarding matters related to Open Government,
> public records, Sunshine Taskforce or privacy as described in Govt. Code
> 67.24 (b) (1) (iii) & 67.21 i:
>>>>
>>>> (iii) 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.
> > > >
> > > > (i) The San Francisco City Attorney's office shall act to protect and
> secure the rights of the people of San Francisco to access public
> information and public meetings and shall not act as legal counsel for any
> city employee or any person having custody of any public record for purposes
> of denying access to the public. The City Attorney may publish legal
> opinions in response to a request from any person as to whether a record or
> information is public. All communications with the City Attorney's Office
> with regard to this ordinance, including petitions, requests for opinion,
> and opinions shall be public records
> > > > Also please provide the detailed attorney billing records related to
> this advice (Sample attached).
> > > >
> > > > Lastly please provide detailed calendars for all attorneys who have
> advised Ms. Calvillo on these matters whether or not the calendar shows the
> meeting and whether or not attorney billing records were created as part of
> the advice.
> > > >
> > > > Please email information in its original electronic format on a daily
> incremental basis to kimo@webnetic.net if it exists only in paper form
> please provide it as scanned PDF, if information is redacted please footnote
> with express legal exemptions.
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>

"Kimo Crossman"
<kimo@webnetic.net>

02/05/2008 06:56 AM

Please respond to <kimo@webnetic.net>

To <sotf@sfgov.org>, <paula.jesson@sfgov.org>, <cityattorney@sfgov.org>, <Alexis.Thompson@sfgov.org>, <Matt.Dorsey@sfgov.org>

cc '"Allen Grossman"' <grossman356@mac.com>, <home@prosf.org>

bcc

Subject Amendment to complaints #08004-08007

Please add the additional code sections to each complaint

Government Code 6257 for failure to respond "Promptly"
67.21 (a) for failure to respond without "unreasonable delay"
67.21 (d) for failure to issue a determination by the Supervisor of Records in ten days
67.25 (b) for invalid invocation of extension of time for easily accessible billing reports and calendars
67.26 for assertion that work effort could be queued "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."

For 08006 only 67.22 failure to provide Oral Information

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

MATT DORSEY
Public Information Officer

February 5, 2008

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. 08007

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. We will address the merits of the complaint at a later time.

Very truly yours,

DENNIS J. HERRERA
City Attorney

MATT DORSEY
Public Information Officer

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2008 FEB -5 AM 11:22
BY

CITY HALL · 1 DR. CARLTON B. GOODLETT PLACE, ROOM 234 · SAN FRANCISCO, CALIFORNIA 94102-0917
RECEPTION: (415) 554-4700 · FACSIMILE: (415) 554-4747

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

ALEXIS P. THOMPSON
Deputy Press Secretary

DIRECT DIAL: (415) 554-4653
E-MAIL: alexis.truchan@sfgov.org

February 19, 2008

Re: Kimo Crossman v. City Attorney, Complaints #08004-08007

Dear Honorable Members of the Sunshine Ordinance Task Force:

This correspondence serves to address the most recent complaints filed by Mr. Kimo Crossman against the Office of the City Attorney to the Sunshine Ordinance Task Force. The complaints that are slated to be before the Task Force are #08004, #08005, #08006, and #08007.

As the Task Force is aware by receipt of correspondence between our office and Mr. Crossman, in a letter written by City Attorney Public Information Officer Matt Dorsey on January 12, 2006, Mr. Crossman's requests for information have oftentimes placed vast burdens on the resources of our office as well as other city departments. For this reason, the City Attorney informed Mr. Crossman that due to his unprecedented number of detailed requests, some requiring a voluminous amount of material to be examined and reviewed for protected information, our office deemed it necessary to limit the time spent responding to Mr. Crossman's requests to allow us to dutifully perform our other work. We advised our clients to do the same.

In the aforementioned letter and in subsequent correspondence with Mr. Crossman to which the Task Force was made aware, the City Attorney's Office also made clear that before devoting significant resources to a new request made by Mr. Crossman, we would complete our responses to his outstanding requests. We have advised our clients to do the same. When setting forth this process to best handle Mr. Crossman's requests, while reasonably attempting to protect City resources, we realized that this would result in missed deadlines. In this case we received a number of requests from Mr. Crossman during a relatively short time frame and since then we have also had to expend considerable resources responding to his complaints before the Task Force, at least one petition to the Supervisor of Records, and providing advice to client departments pertaining to his requests of them.

The City Attorney's Office takes very seriously its obligations under the Sunshine Ordinance and other public information laws. At the same time we owe a duty to the more than 750,000 other residents of this City to fulfill all of our duties, which include responding to other individual requests for public records. In the past two years, we believe that we have made progress in trying to fulfill Mr. Crossman's requests in a timely manner without compromising our services to every other San Franciscan. It is my hope that the Task Force recognizes the judiciousness with which we have sought to balance our competing obligations.

Very truly yours,

Alexis Thompson
Deputy Press Secretary