

Date: March 25, 2008

Item No. 8/a

File No. 08013

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Complaint by: Kimo Crossman vs SOTF-A**
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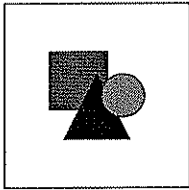
Completed by: Frank Darby

Date: March 19, 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.



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City Attorney

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MEMORANDUM

March 17, 2008

KIMO CROSSMAN v. SOTF ADMINISTRATOR, FRANK DARBY (08013)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

On January 25, 2008, the Sunshine Posse a group of individuals interested in Public Records and Public Meetings issues made an Immediate Disclosure Request ("IDR") to Frank Darby, Sunshine Ordinance Task Force Administrator ("Administrator") for a copy of all e-mails sent and received by the Administrator from January 1, 2008 to January 25, 2008. (The Sunshine Posse sent a supplemental request for e-mails from January 25, 2008 to February 1, 2008).

Before the end of the next business day after the receipt of the IDR, the Administrator responded by requesting an extension of time due to the voluminous amount of materials that he would have to gather.

On February 6, 2008, the Administrator provided the copies of the requested materials. However, personal e-mail addresses, telephone numbers, and or addresses were redacted. The Administrator cited Section California Government Code Section 6253.9(f) and stated that confidential information, the disclosure of which would jeopardize or compromise the security and integrity of the Department's/City's Systems is the basis for the non-disclosure.

COMPLAINANT FILES COMPLAINT

On March 2, 2008, Kimo Crossman on behalf of the Sunshine Posse filed a complaint online and alleged that the Administrator did not provide a legal reason for redacting the information in the documents provided.

JURISDICTION

The Sunshine Posse requested public records in the possession of the SOTF Administrator through an IDR. The Administrator provided redacted records citing a statutory exemption from disclosure. Kimo Crossman on behalf of the Sunshine Posse filed a complaint alleging violations of 67.21 and 67.25 and other sections of the Ordinance that are listed in this memorandum. The Task Force has jurisdiction to hear this case.

Memorandum**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. 67.25 deals with Immediate Disclosure Requests.
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, San Francisco Administrative Code Section 67.31 deals with responsibility for the Administration of the Sunshine Ordinance Task Force.
8. California Public Records Act, Government Code Section 6253.9 deal with information in an electronic format.
9. California Public Records Act, Government Code Section 6253 deals with public records open to inspection, agency duties and time limits.
9. 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:**

Memorandum

The parties agree to the following facts:

- The Sunshine Posse submitted an Immediate Disclosure Request to SOTF Administrator Darby for a copy of all e-mails sent and received by the Administrator from January 1, 2008 to February 1, 2008.
- The Administrator provided copies of the requested records but redacted certain information and cited a section of the California Public Records Act.

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

Whether documents can be released with no redactions and without compromising the security or integrity of the original record?

2. QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- a.) none.

3. LEGAL ISSUES/ LEGAL DETERMINATIONS:

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

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 to 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 protected 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.

Memorandum

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.

Memorandum

- (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 from 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).
- (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 Public Records Act Government Code Section 6250 et seq.) in particulars

Memorandum

not addressed by this ordinance and in accordance with the enhanced disclosure requirement provided in this ordinance.

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.

Section 67.25 provides:

- a.) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.
- b.) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requestor shall be notified as required by the close of business on the business day following the request.
- c.) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request

Memorandum

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

Section 67.26 provides:

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to 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 67.31 provides:

Memorandum

...The Clerk of the Board of Supervisors shall provide a full-time staff person to perform administrative duties for the Sunshine Ordinance Task Force and to assist any person in gaining access to public meetings or public information. The Clerk of the Board of Supervisors shall provide that staff person with whatever facilities and equipment are necessary to perform said duties.

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 6253.9 provides:

- a.) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:
 - (1) The agency shall make the information available in any electronic format in which it holds the information.

Memorandum

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in any electronic format.

b.) Notwithstanding paragraph (2) of subdivision a.), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision a.), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

c.) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

d.) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

e.) Nothing in this section shall be construed to permit an agency to make information available only in electronic format.

f.) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

g.) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

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.



"Kimo Crossman"
<kimo@webnetic.net>

03/02/2008 05:37 PM

Please respond to
<kimo@webnetic.net>

To "SOTF" <sotf@sfgov.org>

cc "Allen Grossman" <grossman356@mac.com>, "Christian Holmer" <mail@csrsf.com>

bcc

Subject SOTF Complaint SOTF Administrator, redacted email addresses

Submitted on: 3/2/08

Department: Clerk of the Board/SOTF Administrator

Contacted: SOTF Administrator

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: 67.27, 6253 (b), 67.21 (L) (wrong format)

Description:

I Kimo Crossman am filing this complaint for the Sunshine Posse. They requested all the emails sent to and from SOTF mailbox for January 2008 and the emails had email addresses incorrectly redacted and the emails provided also were bunched rather than forwarding each over to preserve the character of the original email. This is also a violation of the board motion M06-134 and 6253 (b) Please see the attached City Wide Website policy recently adopted by COIT in January which we believe will address the redaction of email addresses. It says if a citizen contacts the government by city website that the information provided including contact info is public record - therefore will not be redacted.

The redaction of personal email addresses requires an express permissive exemption under Sunshine 67.27, A general statement of Right to Privacy is not an express permissive exemption. Redacting for privacy also requires applicable facts, balancing tests to be applied for *each* redaction.

Attached is one of the sample emails provided by the Taskforce administrator you can see that is string of about ten emails rather than one as was requested and if you scroll down to the email from Harrison Sheppard there is a email address that is redacted - The reasons the Administrator provides to justify redaction are :

6250, 6254 (c), 6254 (k), Cal
Constitution, Article I, Section 1.

6250 is a general right to privacy, Terry Francke addresses that below and it is also not a Specific Permissive Exemption as is required under 67.27 (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.

6254 (c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy

As shown elsewhere in this complaint there is no general expectation of privacy when contacting your government and "Personnel" is a for job related data, it is not "Personal"

6254 (k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

Is also dealt with by Terry Francke here:

The variety of exemptions in the CPRA for home phone/address information for particular classes of individuals in particular kinds of records creates the strong implication that aside from those situations there is no inherent confidentiality or expectation of privacy. If home phone and address information were categorically exempt as a matter of privacy of other policy, there would be no need to codify protection in these special instances.

Many agencies might argue a public interest exemption under Section 6255, but that balancing exercise has been abrogated in the SF Sunshine Ordinance. The only basis that I can see for re-introducing the balancing test would be under Evidence Code Section 1040, the privilege for official information received in confidence, but it would be the library's burden affirmatively to show that the information had really been received on condition that it would not be disclosed. If that fact were shown, then the question would be what the library asserts as the public interest in nondisclosure, and whether that interest outweighs the public interest in disclosure.

Terry Francke

Californians Aware

Please see the prior SOTF rulings on redaction of email addresses

http://sfgov.org/site/sunshine_page.asp?id=11391

On Cockrell vs. Rec and Park, April 23rd, 2002

"Motion adopted that the redaction of addresses, emails and telephone numbers constitutes a violation of the Sunshine Ordinance. (Koltun/Hogan) (Bernstein, Sterner no) (Courtney, Harrison absent). The motion carried."

=====

Here is some analysis on personal email addresses and personal emails of someone performing city business (is there a reasonable expectation of privacy when someone contacts their government for a standard request and makes no effort to obscure personal info) I know there is the unpublished San Diego reader case about email addresses

Mr. Crossman,

Holme Roberts & Owen LLP is general counsel for the California First Amendment Coalition and responds to CFAC action line inquiries. In responding to these inquiries, we can give general information regarding open government and speech issues, but cannot provide specific legal advice or representation.

At least one court, *Holman v. Superior Court of San Diego County*, 31 Med. L. Rptr. 1993 (2003), determined that there is no absolute privilege exempting private identifying information such as email addresses and cellular and land line telephone numbers. The court determined, however, that such information could be exempted from disclosure under the California Public Records Act ("CPRA") if it is found that the public interest in nondisclosure outweighs the public interest in disclosure -- the balancing analysis found in section 6255 of the CPRA. It appears, therefore, that disclosure of such identifiable information will depend on the facts of each particular case. (As we know 6255 cannot be applied under the San Francisco Sunshine Ordinance -kimo).

In the *Holman* case, a media entity sought disclosure of email records containing email addresses, and cellular and landline telephone records of an employee that had recently been hired and who was allegedly connected with an entity with whom the agency was engaged in a controversial project. The court of appeals first determined that there was "no absolute privilege exempting private identifying information from disclosure" under section 6254, subdivision (k), which exempts from disclosure any information that is exempt pursuant to state or federal law. The court went on to state, however, that personal information protected by California's constitutionally guaranteed right of privacy can be exempted from CPRA disclosure under the balancing test set forth in section 6255 -- the "catch-all" provision.

With respect to the "catch-all" analysis on email addresses, the court weighed the interest furthered by disclosure (i.e., the activities of a person hired as a staff member of the agency for which she may have had no prior experience, and who was allegedly connected to an entity with whom the agency was then engaged in a controversial project) against the interests furthered by nondisclosure (i.e., the chilling effect associated with revealing email addresses of those the employee dealt with), and determined that the public interest served by not disclosing the email information does not clearly outweigh the public interest served by disclosure.

Similarly, with respect to telephone numbers, the court determined that

under the facts of this case, the parties who called or were called by the employee in her governmental capacity had a correspondingly diminished interest in retaining the privacy of those contacts, and the limited scope of the disclosure here -- the telephone numbers of those contacting a specific governmental employee for a limited period of time -- will have a de minimus chilling impact on future communications. Because the disclosure here sought "appears necessary (or even indispensable) to furthering the particularized governmental accountability concerns," the reasons supporting nondisclosure, the court concluded, do not clearly outweigh the substantial public interest in ensuring governmental accountability. The court exempted from disclosure the land line phone records only because the bills reflecting the employee's calls were not limited to the employee's land line calls but included calls placed by others who used that same land line.

I hope you find this information helpful.

Isela Castaneda
Holme Roberts & Owen LLP
(San Francisco Counsel for California First Amendment Coalition)
560 Mission Street, 25th Floor
San Francisco, California 94105-2994
Tel: 415.268.1956
Fax: 415.268.1999
isela.castaneda@hro.com

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

From: **Sunshine Posse** <sunshine.posse@gmail.com>

Date: Wed, Feb 13, 2008 at 2:15 AM

Subject: Re incomplete response from SOTF on records request, prior precedent email addresses may not be redacted

To: SOTF <sotf@sfgov.org>, kimo@webnetic.net, Allen Grossman <grossman356@mac.com>, libraryusers2004@yahoo.com, James Chaffee <chaffeej@pacbell.net>, Pmonette-shaw@earthlink.net, Wayne Lanier <w_lanier@pacbell.net>, Amanda Witherell <amanda@sfbg.com>, Angela.Calvillo@sfgov.org, "Dougcoms@aol.com" <Dougcoms@aol.com>, Richard Knee <rak0408@earthlink.net>, Erica Craven <elc@lrolaw.com>, "Bruce Wolfe, MSW" <sotf@brucewolfe.net>

SOTF:

You have not keyed redactions as required under 67.26 nor provided specific facts and applied balancing tests for each redaction. You have also sent emails as groups rather than individually.

"Upon request, an *exact* copy shall be provided unless impracticable to do so." Cal. Gov't. Code Section 6253(b).

You have not provided paper-only documents electronically as provided for in 67.21-1 and board motion M06-134. We requested these documents be provided as Fax or Scanned PDF or

posted online.. The Board motion unanimously approved states that the Clerk shall provide public records in the format requested by the requestor (attached) - it is not limited to Electronic records.

Please note below the description of Public Records is not limited to Electronic Public Records - it is for records in ANY form

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.

Please see the prior SOTF rulings on redaction of email addresses

http://sfgov.org/site/sunshine_page.asp?id=11391

On Cockrell vs. Rec and Park, April 23rd, 2002

"Motion adopted that the redaction of addresses, **emails and telephone numbers constitutes a violation of the Sunshine Ordinance.** (Koltun/Hogan) (Bernstein, Sterner no) (Courtney, Harrison absent). The motion carried."

On Feb 12, 2008 12:18 PM, SOTF <sotf@sfgov.org> wrote:

This e-mail is in response to your request below. Your request is for e-mails sent and received from January 26, 2008 to February 1, 2008.

We have located approximately 52 e-mails responsive to your requests. Pursuant to State and Local law, we are in the process of reviewing these records and redacting personal information such as e-mail addresses, home phone numbers and addresses. (See Cal. Gov. Code §§ 6250, 6254(c), 6254 (k), Cal. Const., Art. I, § 1, and San Francisco Administrative Code § 67.1 (g)). This may require that we print out e-mail records, which require redaction. When possible, redacted e-mails will be forwarded via e-mail with the word "Redacted" used to replace information that has been redacted. Non-redacted e-mails will be forwarded to you on a rolling basis. We will notify you when the e-mail records that require redaction and/or other correspondence that exist only in paper are available for pickup, in the office of the Clerk of the Board.

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



m06-0134.pdf 20080103130459120(2)(2).pdf

----- Message from "Sunshine Posse" <sunshine.posse@gmail.com> on Sun, 2 Mar 2008 17:17:44 -0800 -----

To: <kimo@webnetic.net>
Subject: Fwd: SOTF Correspondence Sent & Received_pt1

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

From: SOTF <sotf@sfgov.org>
Date: Thu, Feb 14, 2008 at 10:33 AM
Subject: SOTF Correspondence Sent & Received_pt1
To: sunshine.posse@gmail.com

Below are e-mail's sent and received for January 26 through February 1, 2008.

Personal e-mail addresses, telephone numbers and home addresses have been redacted [Redacted](Cal Gov Code Section 6250, 6254 (c), 6254 (k), Cal

Constitution, Article I, Section 1).

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

----- Forwarded by SOTF/SOTF/SFGOV on 02/12/2008 02:18 PM -----

kimo

<kimo@webnetic.net

t>

To

Sent by: "Bruce Wolfe" <sotf@brucewolfe.net>

kimocrossman@gmail.com cc

[l.com](mailto:kimocrossman@gmail.com) "Allen Grossman"

<grossman356@mac.com>, "Doug

Comstock" <Dougcoms@aol.com>,

01/26/2008 01:07 "Richard Knee"

AM <rak0408@earthlink.net>, "Peter

Warfield"

<libraryusers2004@yahoo.com>,

Please respond to "Wayne Lanier"

kimo@webnetic.net <w_lanier@pacbell.net>, "Patrick

Monette-Shaw"

<pmonette-shaw@earthlink.net>,

"Erica Craven" <elc@lrolaw.com>,

SOTF <sotf@sfgov.org>, "Steve

Lawrence"

<splawrence@sbcglobal.net>,

rwhartzjr@sbcglobal.net

Subject

Suggestions to SOTF Rules Committee
and Budget Committee

I'd suggest:

RULES

Digital Recording of all meetings, and webcast and or phone call listen lines for real-time monitoring

see free options to do this here:

<http://www.blogtalkradio.com/>
<http://www.freeconference.com/>

Posting of documents collected for meeting packets in their original electronic format in online archive

Posting of scanned PDF of handwritten notes/votes of clerk within one business day of meeting

Minutes Shall be very descriptive as is common for other city bodies which have full time staff, draft versions posted online within two business days.

Require Administrator and Llorenete to begin creating an annotated version of the Ordinance that records all determinations and gives orders longterm weight

Post Orders of Determination in text searchable fashion in prominent location on the website and tagged by issue, department, violations and issue press release widely distributed when directed by SOTF and for all referrals.

Administrator to provide large screen monitor to assist in revising the ordinance and in presentations at meetings there are many different options for this as was observed during a recent Ballot Simplification set of meetings.

Orders of determination issued within two business days of approval.

Draft Meeting agenda and packets created and posted 5 business days before meeting to allow last minute submissions.- often people do not know what is

going to be on the agenda until it is posted and then it is too late to provide a written comment. Require responding departments to provide written response 10 business days before a meeting.

All SOTF communications shall be posted online in text searchable format in real or near-realtime - even if this means Google Groups which has been done before for the Techconnect Passive meeting body announcements and of course we have the Palo Alto City Council email example. All communications shall be brought to the meeting for public review that were sent in the last 30 days (or viewable if a public terminal is provided).

Allow at least a 90 Second summary after the SOTF discussion for a complaint hearing by the complainant and the respondent before a motion is made to address common problems where departments introduce new evidence or allegations when they are questioned by the SOTF members.

Allow the complainant to ask the respondent departments in a hearing as is common with some method to control time and appropriateness.

Require respondents and complainants to swear or affirm before speaking.

Require Mr. Llorente, a sworn deputy city attorney, to review documents withheld and produce a legal analysis

Encourage the Chair to allow when time permits at least a 90 second public comment period before a motion on the floor is voted on.

Revote on the minimal votes required for an Order of Determination since now we have proof that the City Attorney does not apply the Charter provisions to SOTF or at least have a motion to notify complainants of optional automatic continuance if less than 9 voting members can hear a matter.

BUDGET

Budget funding to pay for Real Time Captioning or even legal quality transcription of meetings and posting of that content online.

Budget funding to have document cameras for Building Mgmt/Audio Visual for the meetings rooms used by SOTF.

Administrator to work with DTIS to provide Wi-Fi or wired internet access to the public for allow research and save printed copies for every meeting

or a terminal or laptop for public access for research during the meeting.
Budget funding if there is a charge for this.

I'm suggesting this stuff now so that

On Jan 25, 2008 8:59 PM, Bruce Wolfe <sotf@brucewolfe.net> wrote:
Dear Mr. Grossman,

Please send again your request for agenda item for the SOTF Rules
Committee and any other issues or concerns you or others may like to have
discussed.

I will be scheduling this meeting sometime the second or third week of
February to give both you and SOTF staff time to get the agenda together.
Please submit to me no later than January 31, 2008.

Thank you in advance.

Bruce Wolfe

----- Forwarded by SOTF/SOTF/SFGOV on 02/12/2008 02:18 PM -----

"The Post Office"
<postmaster@sfgov.org>
To
sotf@sfgov.org
01/24/2008 02:01 PM cc
Subject
Mail System Error - Returned Mail

The original message was received at Thu, 24 Jan 2008 14:01:29 -0800
from sfgov.org [11.200.40.118]

----- The following addresses had permanent fatal errors -----
<sotf@sfgov.org>

(See attached file: Removed Attachment.txt)

----- Forwarded by SOTF/SOTF/SFGOV on 02/12/2008 02:18 PM -----

"mimi.martines3
johnson"
<mimi.martines3@gmail.com> To
nixthisbencram...@gmail.com
cc
01/28/2008 04:41
AM Subject
HELLO

Hello

My name is mimi, i saw your profile today and became intrested in you,i
will also like to know you more,and if you can send an email to my email
address,i will give you my pictures here is my email address
mimi_martines@yahoo.com) I believe we can move from here! Awaiting for your
mail to my email address above mimi. PLEASE WRITE ME DIRECT TO MY MAIL
ADDRESS FOR
EASY COMMUNICATION, Kissss mimi MIMI_martines@YAHOO.COM

----- Forwarded by SOTF/SOTF/SFGOV on 02/12/2008 02:18 PM -----

SOTF/SOTF/SFGOV

01/28/2008 11:34 AM To
"Sunshine Posse"
<sunshine.posse@gmail.com>
cc

Subject
Response: IDR - Original Documents
for SOTF matters(Document link:
SOTF)

This e-mail is in response to your requests, pursuant to the Sunshine Ordinance. Due to the voluminous nature of the information requested, and our need to consult another department we require a 10 day extension of time to respond to your request.

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

"Sunshine Posse"
<sunshine.posse@gmail.com> To

SOTF <sotf@sfgov.org>, "Allen
01/25/2008 12:14 PM Grossman" <grossman356@mac.com>,
"home@prosf.org" <home@prosf.org>,
"Wayne Lanier"
<w_lanier@pacbell.net>, "James
Chaffee" <chaffeej@pacbell.net>,
"Richard Knee"
<rak0408@earthlink.net>, "Erica
Craven" <elc@lrolaw.com>, "Islais
Wharf" <islaiswharf@gmail.com>,
"Oliver Luby"
<oliverlear@yahoo.com>, "Joe Lynn"
<joelynn114@hotmail.com>, "Amanda
Witherell" <amanda@sfbg.com>,
"Steve Jones" <steve@sfbg.com>,
"Patrick Monette-Shaw"
<pmonette-shaw@earthlink.net>, "Dee
Modglin" <dmodglin@earthlink.net>,
"ahimsa sumchai"
<asumchai@hotmail.com>,
"frandacosta@att.net"
<frandacosta@att.net>, "Terry
Francke" <terry@calaware.org>,
"Bruce Brugmann" <bruce@sfbg.com>,
"Bruce Wolfe, MSW"
<sotf@brucewolfe.net>,
dpwaggoner@gmail.com

cc

Subject

Immediate Disclosure Request -
Original Documents for SOTF matters
for FREE online Archive

Immediate Disclosure Request

Dear SOTF

We have been notified that DTIS cannot provide an online archive of SOTF information nor post SOTF communications online..

We are going to begin a free public service of posting the original electronic documents submitted for each packet in an online archive that is text searchable. For all meetings in January meeting, please email the meeting agenda, scan of handwritten notes from the meeting and other paper only documents, draft minutes if they have been prepared, digital audio if it was recorded and all the documents in their original format: emails, powerpoints, word, memos from Llorente and other docs collated for the meeting packet. Again, if there is a choice between the original electronic format of a document and a PDF or paper version, we are requesting the original electronic format.

Additionally this is a separate request for all emails sent to or from the SOTF account or paper only documents send to or from SOTF from Jan 1st - Jan 25th. We plan to post all policy body communications online like the Palo Alto example of all city council emails posted online While this lists the SOTF account, if emails are sent to other Clerk staff that pertain to SOTF matters, we are interested in them as well. So for example if an email is sent to Chris the administrator directly rather than the SOTF account. Same if Chris or Angela or Frank send an email to Doug Comstock on an SOTF matter. The easiest way to do this is to CC the provided archive email account on all communications going forward.

<http://www.cityofpaloalto.org/council/>

Seperately we request

We are interested in obtaining visitor log info of people who interact with SOTF by phone or in person whether this is recorded on paper or online.

We are interested in receiving all draft minutes when they have been created.

We are interested in obtaining voicemails let at the SOTF. Please contact to discuss how this may occur. DTIS and SFGTV have previously provided this info.

At this point we are not interested in capturing changes to the SOTF website. Though we do request the final PDF meeting packet by item even though it is unsearchable.

If documents are being deleted or revised, we should discuss how to handle these matters. If items have been deleted since January 1st, please obtain them from backup.

We are willing to work with you on the least labor intensive method for producing this info. We would like to obtain the info by each meeting and by each agenda item so that it can be easily collated. Please provide information on a daily incremental basis per Sunshine. In the unlikely case there are issues with redactions, please contact us to discuss options.

Sunshine Posse

----- Forwarded by SOTF/SOTF/SFGOV on 02/12/2008 02:18 PM -----

Harrison Sheppard
<hjlaw@jps.net>

To
01/28/2008 09:14 AM SOTF <sotf@sfgov.org>
cc
<kristin@chu.com>
Subject

Re:

The following are my comments on the draft "2006-2007 Combined Annual Report" as circulated at the Task Force's January 22, 2008 meeting:

1. SUMMARY: I respectfully recommend that

(a) The first sentence of the Summary should be amended to read:

The Sunshine Ordinance Task Force is gratified to report that administration of the Ordinance continued to improve open government in the City and County of San Francisco in 2006 and 2007, while the the Task Force itself handled a substantially greater number of matters than ever before.

(b) In the present third paragraph of the Summary, the first eleven words should be deleted so that its first sentence begins with the words "2006 and 2007 were..." and the following sentence should be added to the end of the paragraph:

Efforts are being made to streamline the packet materials circulated for the consideration of the Task Force without compromising the necessity of providing Members with the essential documentation required for their informed consideration.

(c) The word "verbal" in the fourth paragraph should be changed to the word "oral."

(d) The second sentence of the fifth paragraph should be changed to read as follows:

The Task Force has been giving these problems serious consideration, and is working diligently to formulate effective solutions through appropriate recommended amendments to the Ordinance.

(e) The first sentence of the sixth paragraph should be changed to read as follows:

We bring to your attention four issues we regard as serious enough to warrant the Board's attention and action.

(f) The last sentence of the sixth paragraph should be changed to read as follows:

The Task Force looks forward to discussing each issue with the Board and work with it to arrive at appropriate and effective solutions in the near future to the problems they present..

2. RECOMMENDED ACTIONS: I respectfully recommend that we add to the actions proposed an express request for to the Board to authorize sufficient additional funding to enable the Task Force to design and implement a record-keeping system for administration of the Ordinance that may serve as a model to all other city agencies for systems that will further facilitate and improve compliance with Sunshine requests, as recommended in a September 10, 2007 memorandum to the Task Force from the Mayor's Appointee. This additional action item should include a estimate of the period within which the Task Force would submit a budget to the Board to carry out this action item upon an indication of the Board's receptivity to the proposal without its necessarily approving it in advance.

Harrison Sheppard
Mayor's Appointee
SOTF

> Hello Task Force members,
>
> Kristian Chu requests that members submit their suggested changes to the
> year end report by next Wednesday (1/30/08) so that it may be ready to be
> included in the next TF packet.
>
> Thanks
>
> Chris Rustom
> 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
>
----- Forwarded by SOTF/SOTF/SFGOV on 02/12/2008 02:18 PM -----

Harrison Sheppard
<hjlaw@jps.net>

01/28/2008 09:17 AM To SOTF <sotf@sfgov.org>
cc

<Redacted>

Subject
Re: Comments on Annual Report (With
typographical Corrections)

The following are my comments on the draft "2006-2007 Combined Annual Report" as circulated at the Task Force's January 22, 2008 meeting:

1. SUMMARY: I respectfully recommend that

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Harrison Sheppard
Mayor's Appointee
SOTF

- > Hello Task Force members,
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- >
- Forwarded by SOTF/SOTF/SFGOV on 02/12/2008 02:18 PM -----

Harrison Sheppard
<hjslaw@jps.net>

To

01/28/2008 09:41 AM SOTF <sotf@sfgov.org>
cc

["Dougcoms@aol.com"](mailto:Dougcoms@aol.com)
<Dougcoms@aol.com>

Subject

Re: Questions for Mr. St. Croix

Frank:

In accordance with your request at the January 22, 2008 meeting of the Task Force, I paste in below questions to Mr. St. Croix I suggested to Chairman Comstock (following my review of the transcript of Mr. St. Croix's Task Force testimony) that Mr. St. Croix might have been asked. These questions are shown in red font. The last question from the quoted e-mail shown below (in blue font) was actually addressed to Chairman Comstock, but might be considered as an added question to Mr. St. Croix, perhaps rephrased to begin "Is there any reason the Ethics Commission cannot report to the Task Force on each..." or some such.

Reprinted from E-mail to Chairman Comstock dated December 19, 2007 from Harrison Sheppard, Mayor's Appointee:

St. Croix's inability to discuss specific cases with the Task Force made it very difficult to ascertain the extent to which the Commission has actually investigated violations referred to it by the Task Force. (He evidently admitted that there was a long period when the Commission simply did not have the resources to conduct any investigations.)

Had I been at the meeting, I would have wanted to ask him questions such as:

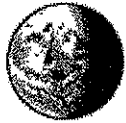
- (1) Can you estimate how many matters referred to you by the Task Force as a violation have in fact been investigated by the Commission?
- (2) Among those, if any, that were investigated, can you explain the kinds of factors that have led you to conclude that the violations (as found by the Task Force) did not amount to "willful misconduct?"

(3) With respect to any such cases, what were the kinds of evidentiary problems you encountered making it difficult for the Commission to prove "willful misconduct?"

(4) Would the Task Force be likely to see more enforcement action by the Commission if its Orders of Determination included a summary finding by the Task Force as to the elements of the matter that suggested or indicated or demonstrated that the violation was "willful?"

Does the Ethics Commission report to the Task Force on each matter when it declines to seek a penalty, and specify to the Task Force the grounds for its non-action?

Harrison Sheppard
Mayor's Appointee



"Sunshine Posse "
 <sunshine.posse@gmail.com
 >
 03/11/2008 01:30 PM

To SOTF <sotf@sfgov.org>, Angela.Calvillo@sfgov.org, "Allen Grossman" <grossman356@mac.com>, kimo@webnetic.net, "home@prosf.org" <home@prosf.org>,
 cc
 bcc
 Subject SOTF Admin refuses to scan paper only records to PDF and email - 3 recent examples

We requested a number of SOTF documents that were paper only be scanned as PDF and emailed. That was refused as the three examples at the bottom of this email show.

We again request that the paper only documents be scanned and emailed to sunshine.posse@gmail.com

SEC. 67.29-2. INTERNET ACCESS/WORLD WIDE WEB MINIMUM STANDARDS.

Each department of the City and County of San Francisco shall maintain on a World Wide Web site, or on a comparable, readily accessible location on the Internet, information that it is required to make publicly available. **Each department is encouraged to make publicly available through its World Wide Web site, as much information and as many documents as possible concerning its activities.**

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

From: **Sunshine Posse** <sunshine.posse@gmail.com>
 Date: Wed, Feb 13, 2008 at 3:15 AM
 Subject: Re incomplete response from SOTF on records request, prior precedent email addresses may not be redacted
 To: SOTF <sotf@sfgov.org>, kimo@webnetic.net, Allen Grossman <grossman356@mac.com>, libraryusers2004@yahoo.com, James Chaffee <chaffeej@pacbell.net>, Pmonette-shaw@earthlink.net, Wayne Lanier <w_lanier@pacbell.net>, Amanda Witherell <amanda@sfbg.com>, Angela.Calvillo@sfgov.org, "Dougcoms@aol.com" <Dougcoms@aol.com>, Richard Knee <rak0408@earthlink.net>, Erica Craven <elc@lrolaw.com>, "Bruce Wolfe, MSW" <sotf@brucewolfe.net>

SOTF:

You have not keyed redactions as required under 67.26 nor provided specific facts and applied balancing tests for each redaction. You have also sent emails as groups rather than individually.

"Upon request, an *exact* copy shall be provided unless impracticable to do so." Cal. Gov't. Code Section 6253(b) .

You have not provided paper-only documents electronically as provided for in 67-29-2, 67.21-1 and board motion M06-134. We requested these documents be provided as Fax or Scanned PDF or posted online.. The Board motion unanimously approved states that the Clerk shall provide public records in the format requested by the requestor (attached) - it is not limited to Electronic records.

Please note below the description of Public Records is not limited to Electronic Public Records - it is for records in ANY form

Under 67.26 the only cost can be for materials not staff time. For electronic records that is zero.

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.

67.26...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.

From Frank Darby:

Four Order of Determinations attached to e-mails for complaint numbers 07083, 07085, 07093, and 07097 (totalling 4 pages) were deleted (as indicated by the word Redacted below) because we were unable to redact personal information within the e-mail. **The pages will be made available at a cost of 40 cents. Please let us know if you wish to prepay for copies of the printed Order of Determinations and have them mailed.**

From Frank Darby

We will notify you when the e-mail records that require redaction and/or other correspondence that **exist only in paper are available for**

pickup, in the office of the Clerk of the Board.

From Frank Darby

- b.) We do not create or maintain handwritten meeting notes in any electronic format, nor do Public Records laws or our records management policies obligate us to do so. Copiers of handwritten notes will be made available for pickup in the Office of the Clerk of the Board, room 244, upon receipt of payment of copying cost of \$7.40 (74 pages at 10 cents/page. Additional cost would be added for postage if mailed). Please let us know if you wish to prepay for**



copies of the handwritten paper notes and have them mailed. m06-0134.pdf



SOTF/SOTF/SFGOV
03/12/2008 12:37 PM

To SOTF/SOTF/SFGOV@SFGOV
cc kimo@webnetic.net
bcc
Subject SOTF Response Complaint: #08013_Kimo Crossman vs
SOTF Administrator

History: This message has been forwarded.

This e-mail is the Department's response to the above titled complaint.

The Department is not contesting that the Task Force has jurisdiction over this matter. However, the complaint is without merit.

On February 25, 2008, the Sunshine Posse sent the Department an IDR requesting, among other things, "all emails sent to or from the SOTF account or paper only documents sent to or from SOTF from Jan 1st - Jan 25th." On February 1, 2008, in response to our notice that an extension of time was needed, the Sunshine Posse sent another request to include "all requested material from Jan 26th - 2/1."

The Department responded by providing approximately 40 separate e-mails (limited to size) containing over 300 compiled e-mails that were responsive to the request. We also notified the requestor that pursuant to state and local laws personal information such as e-mail addresses, home phone numbers and addresses were being redacted. Redactions were made pursuant to California Government Code §§ 6250, 6254(c), 6254 (k), Cal. Const., Art. I, § 1, and San Francisco Administrative Code § 67.1(g). There was no denial of records and none of the content was redacted from the e-mails or attachments.

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



"Kimo Crossman"
<kimo@webnetic.net>

03/12/2008 09:57 PM

Please respond to
<kimo@webnetic.net>

To "SOTF" <sotf@sfgov.org>

cc

bcc

Subject RE: SOTF Response Complaint: #08013_Kimo Crossman vs
SOTF Administrator

Please send me the materials I have submitted on this complaint so far I wish to make sure they are in order

Thank you

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

From: SOTF [mailto:sotf@sfgov.org]

Sent: Wednesday, March 12, 2008 12:37 PM

To: SOTF

Cc: kimo@webnetic.net

Subject: SOTF Response Complaint: #08013_Kimo Crossman vs SOTF Administrator

This e-mail is the Department's response to the above titled complaint.

The Department is not contesting that the Task Force has jurisdiction over this matter. However, the complaint is without merit.

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Frank Darby, Administrator
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SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227

MEMORANDUM

Date: March 18, 2008
To: Honorable Members, Sunshine Ordinance Task Force
From: Frank Darby, Administrator 
Subject: Exhibits Re: Complaint #08013

OUTLINE OF EXHIBITS

EXHIBIT 1	IDR From the Sunshine Posse.
EXHIBIT 2	Sunshine Posse e-mail that responses be sent to Sunshine.Posse@gmail.com
EXHIBIT 3	Administrators initial response to IDR.
EXHIBIT 4	Sunshine Posse's extension of the request.
EXHIBIT 5	Administrator's subsequent response to IDR.
EXHIBIT 6	Administrator's List identifying e-mails that were sent in response to the request.
EXHIBIT 7	Administrator's response to extension request.
EXHIBIT 8	Administrator's response to request for agenda's in Word format.
EXHIBIT 9	Administrator's response to Sunshine Posse's disagreement with the response.
EXHIBIT 10	January 16, 2007, Ltr from the Administrator to the Task Force re: e-mail redactions.

03-18-2008 RCVD

Sunshine Ordinance Task Force
City Hall
1 Dr. Carlton B. Goodlett Place, Room 408
San Francisco, CA 94102-4689



"Sunshine Posse"
<sunshine.posse@ail.com>
>

01/25/2008 12:14 PM

To SOTF <sotf@sfgov.org>, "Allen Grossman"
<grossman356@mac.co. "home@prosf.org"
<home@prosf.org>, "Wayne Lanier"

cc

bcc

Subject Immediate Disclosure Request - Original Documents for
SOTF matters for FREE online Archive

History: This message has been replied to and forwarded.

EXHIBIT 1

Immediate Disclosure Request

Dear SOTF

We have been notified that DTIS cannot provide an online archive of SOTF information nor post SOTF communications online..

We are going to begin a free public service of posting the original electronic documents submitted for each packet in an online archive that is text searchable. For all meetings in January meeting, please email the meeting agenda, scan of handwritten notes from the meeting and other paper only documents, draft minutes if they have been prepared, digital audio if it was recorded and all the documents in their original format: emails, powerpoints, word, memos from Llorente and other docs collated for the meeting packet. Again, if there is a choice between the original electronic format of a document and a PDF or paper version, we are requesting the original electronic format.

Additionally this is a separate request for all emails sent to or from the SOTF account or paper only documents send to or from SOTF from Jan 1st - Jan 25th. We plan to post all policy body communications online like the Palo Alto example of all city council emails posted online While this lists the SOTF account, if emails are sent to other Clerk staff that pertain to SOTF matters, we are interested in them as well. So for example if an email is sent to Chris the administrator directly rather than the SOTF account. Same if Chris or Angela or Frank send an email to Doug Comstock on an SOTF matter. The easiest way to do this is to CC the provided archive email account on all communications going forward.

<http://www.cityofpaloalto.org/council/>

Seperately we request

We are interested in obtaining visitor log info of people who interact with SOTF by phone or in person whether this is recorded on paper or online.

We are interested in receiving all draft minutes when they have been created.

We are interested in obtaining voicemails let at the SOTF. Please contact to discuss how this may occur. DTIS and SFGTV have previously provided this info.

At this point we are not interested in capturing changes to the SOTF website. Though we do request the final PDF meeting packet by item even though it is unsearchable.

If documents are being deleted or revised, we should discuss how to handle these matters. If items have been deleted since January 1st, please obtain them from backup.

We are willing to work with you on the least labor intensive method for producing this info. We would like to obtain the info by each meeting and by each agenda item so that it can be easily collated. Please provide information on a daily incremental basis per Sunshine. In the unlikely

case there are issues with redactions, please contact us to discuss options.

Sunshine Posse



"Sunshine Posse"
<sunshine.posse@gmail.com>

01/25/2008 12:59 PM

To SOTF <soft@sfgov.org>

cc

bcc

Subject Re: Immediate Disclosure Request - Original Documents for
SOTF matters for FREE online Archive

The email to send all this stuff to is Sunshine.posse@gmail.com

EXHIBIT 2



SOTF/SOTF/SFGC
01/28/2008 11:34 AM


To "Sunshine Posse" <sunsh_posse@gmail.com>
cc
bcc Angela Calvillo/BOS/SFGOV@SFGOV
Subject Response: IDR - Original Documents for SOTF matters 

EXHIBIT 3

This e-mail is in response to your requests, pursuant to the Sunshine Ordinance. Due to the voluminous nature of the information requested, and our need to consult another department we require a 10 day extension of time to respond to your request.

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



"Sunshine Posse"
<sunshine.posse@ymail.com>

02/01/2008 07:08 PM

To SOTF <sotf@sfgov.org>

cc

bcc

Subject Re: Response: IDR - Original Documents for SOTF matters

History:

This message has been replied to and forwarded.

Please consider this an extension of this request to include all requested material from Jan 26th - 2/1.

On Jan 28, 2008 11:34 AM, SOTF <sotf@sfgov.org> wrote:

This e-mail is in response to your requests, pursuant to the Sunshine Ordinance. Due to the voluminous nature of the information requested, and our need to consult another department we require a 10 day extension of time to respond to your request.

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

EXHIBIT 4



SOTF/SOTF/SFGOV
02/06/2008 03:25 P...

To Sunshine.posse@gmail.com
cc
bcc
Subject SOTF Response to 1/25/08 IDR

EXHIBIT 5

February 6, 2008

Sunshine Posse
Sunshine.posse@gmail.com

Re: IDR for SOTF Matters

Dear Sir or Madam:

This letter completes the SOTF's response to the Immediate Disclosure Request dated January 25, 2008, and submitted by "sunshine.posse@gmail.com" with the subject line "Immediate Disclosure Request-Original Documents for SOTF matters for Free online Archive" (Requests). On, January 28, 2008, via e-mail to you, we invoked a 10-day extension of time to respond to the Request, making our response due by February 7, 2008.

As we understand it, the Request seeks the following:

1. *For all meetings in January, to be e-mailed the meeting agenda, handwritten notes from the meeting and other paper only documents, draft minutes if they have been prepared, digital audio if it was recorded and all the documents in their original format: e-mails, PowerPoint, Word, memos from Llorente and other documents collated for the meeting packet.*
2. *All e-mails sent to and from the SOTF account, e-mails sent to staff that pertain to SOTF matters, and paper only documents sent to or from SOTF from January 1st to January 25th.*
3. *Visitor log information of people who interact with SOTF by phone or in person whether this is recorded on paper or online.*
4. *All draft minutes when they have been created.*
5. *Voice-mails left at the SOTF.*

After conducting a diligent search in the locations where responsive records would likely be found, we respond to the Requests as follows:

1. Response to Request 1, above:
 - a.) Attached to and/or following this e-mail are: 1) meeting agendas and packets for the January 8th, 9th, and 22nd meetings of the full Task Force and the Compliance and Amendments committee ("January Meetings"); including all electronic documents associated with those meetings and 2) draft and approved meeting minutes.
 - b.) We do not create or maintain handwritten meeting notes in any electronic format, nor do Public Records laws or our records management policies obligate us to do so. Copiers of handwritten notes will be made available for pickup in the Office of the Clerk of the Board, room 244, upon receipt of payment of copying cost of \$7.40 (74 pages at 10 cents/page. Additional cost would be added for postage if mailed). Please let us know if you wish to prepay for copies of the handwritten paper notes and have them mailed.
 - c.) Digital audio recordings for the January 8th and 22nd meetings of the Task Force are available. Due to the size of the digital recordings (462mb) our e-mail system does not have the capability to transmit these files. The recordings will be available on CD for pick up in the Office of the Clerk of the Board, room 244 upon receipt of payment of \$1. Please let us know if you wish to prepay for the audio recordings on CD.

2. Response to Request 2, above: We have located approximately 250 e-mails responsive to your requests. Pursuant to State and Local law, we are in the process of reviewing these records and redacting the personal e-mail addresses, home phone numbers and addresses, if any, from these records (*See* Cal. Gov. Code §§ 6250, 6254(c), 6254 (k), Cal. Const., Art. I, § 1, and San Francisco Administrative Code § 67.1(g)). This may require that we print out e-mail records, which require redaction. When possible, redacted e-mails will be forwarded via e-mail with the word "Redacted" used to replace information that has been redacted. Non redacted e-mails will be forwarded to you on a rolling basis. We will notify you when the e-mail records that require redaction and/or other correspondence that exist only in paper are available for pickup, in the office of the Clerk of the Board.
3. Response to Request 3, above: We have no records responsive to this request.
4. Response to Request 4, above: We have no records responsive to this request.
5. Response to Request 5, above: We have no records responsive to this request.

Records will be provided via paper and e-mail on a rolling basis, as they become available. Please let us know whether you wish to inspect or to prepay for copies of the non-electronic responsive records indicated above.

Below are minutes for the January 8, and 22, 2008 meetings of the full Task Force, and the January 9, 2008, Compliance and Amendments Committee meeting.



SOTF Minutes 1-8-08.doc SOTF Minutes 1-22-08.doc CAC_Minutes 1-9-08.doc

If you have questions you can contact Chris Rustom or me at (415) 554-7724.

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

Who	Date	Time	Size	Subject
☐ Sunshine Posse	03/06/2008	12:37 PM	13,971	Re: SOTF Response to 1/25/08 IDR
☐ Sunshine Posse	02/12/2008	01:23 PM	10,728	Re: SOTF Response to 1/25/08 IDR
☐ Sunshine Posse	02/12/2008	12:18 PM	6,572	Response: IDR - Original Documents for SOTF matters
☐ Sunshine Posse	02/12/2008	11:53 AM	1,670,033	☐ Re: SOTF Response to 1/25/08 IDR
☐ Sunshine Posse	01/28/2008	11:34 AM	8,502	Response: IDR - Original Documents for SOTF matters
☐ sunshine.posse	02/14/2008	12:08 PM	3,261,600	☐ SOTF Correspondence Sent & Received_pt8
☐ sunshine.posse	02/14/2008	12:07 PM	1,809,476	☐ SOTF Correspondence Sent & Received_pt7
☐ sunshine.posse	02/14/2008	12:07 PM	1,163,408	☐ SOTF Correspondence Sent & Received_pt6
☐ sunshine.posse	02/14/2008	12:07 PM	570,977	☐ SOTF Correspondence Sent & Received_pt5
☐ sunshine.posse	02/14/2008	12:07 PM	386,836	☐ SOTF Correspondence Sent & Received_pt4
☐ sunshine.posse	02/14/2008	12:07 PM	443,287	☐ SOTF Correspondence Sent & Received_pt3
☐ sunshine.posse	02/14/2008	12:06 PM	141,822	☐ SOTF Correspondence Sent & Received_pt2
☐ sunshine.posse	02/14/2008	10:33 AM	43,495	☐ SOTF Correspondence Sent & Received_pt1
☐ sunshine.posse	02/11/2008	08:32 AM	7,223,393	☐ Correspondence Sent_Pt16
☐ sunshine.posse	02/11/2008	08:30 AM	2,817,321	☐ Correspondence Sent_Pt15
☐ sunshine.posse	02/11/2008	08:25 AM	1,716,176	☐ Correspondence Sent_Pt14
☐ sunshine.posse	02/11/2008	08:20 AM	697,882	☐ Correspondence Sent_Pt13
☐ sunshine.posse	02/11/2008	08:17 AM	186,936	☐ Correspondence Sent_Pt12
☐ sunshine.posse	02/11/2008	08:15 AM	4,765,492	☐ Correspondence Sent_Pt11
☐ sunshine.posse	02/11/2008	08:14 AM	5,248,463	☐ Correspondence Sent_Pt10
☐ sunshine.posse	02/11/2008	08:09 AM	4,638,214	☐ Correspondence Sent_Pt9
☐ sunshine.posse	02/11/2008	08:06 AM	7,233,296	☐ Correspondence Sent_Pt8
☐ sunshine.posse	02/11/2008	08:05 AM	213,805	☐ Correspondence Sent_Pt7
☐ sunshine.posse	02/07/2008	02:59 PM	1,192,417	☐ Correspondence Sent_Pt6
☐ sunshine.posse	02/07/2008	02:51 PM	1,199,285	☐ Correspondence Sent_Pt5
☐ sunshine.posse	02/07/2008	02:30 PM	1,658,393	☐ Correspondence Sent_Pt4
☐ sunshine.posse	02/07/2008	02:25 PM	6,245,907	☐ Correspondence Sent_Pt3
☐ sunshine.posse	02/07/2008	02:19 PM	3,771,109	☐ Correspondence Sent_Pt2
☐ sunshine.posse	02/07/2008	02:12 PM	2,492,651	☐ Correspondence Sent_Pt1
☐ sunshine.posse	02/07/2008	01:40 PM	36,597	Correspondence Rcvd_Pt5
☐ sunshine.posse	02/07/2008	01:37 PM	357,177	Correspondence Rcvd_Pt4
☐ sunshine.posse	02/07/2008	01:36 PM	486,667	☐ Correspondence Rcvd_Pt3
☐ sunshine.posse	02/07/2008	09:59 AM	224,109	Correspondence Rcvd_Pt2
☐ sunshine.posse	02/07/2008	09:58 AM	4,279,739	Correspondence Rcvd_Pt1
☐ sunshine.posse	02/06/2008	03:39 PM	4,713,934	☐ SOTF 1/22/08 Packet_Pt3
☐ sunshine.posse	02/06/2008	03:39 PM	5,560,111	☐ SOTF 1/22/08 Packet_Pt2
☐ sunshine.posse	02/06/2008	03:39 PM	10,747,915	☐ SOTF 1/22/08 Agenda and Packet_Pt1
☐ sunshine.posse	02/06/2008	03:33 PM	5,951,193	☐ SOTF - CAC 1/9/08 Agenda & Packet
☐ sunshine.posse	02/06/2008	03:33 PM	7,827,478	☐ SOTF 1/8/08 Packet_Pt4
☐ sunshine.posse	02/06/2008	03:32 PM	15,054,888	☐ SOTF 1/8/08 Packet_Pt3
☐ sunshine.posse	02/06/2008	03:26 PM	4,630,252	☐ SOTF 1/8/08 Packet_Pt2
☐ sunshine.posse	02/06/2008	03:26 PM	9,195,046	☐ SOTF 1/8/08 Agendas & Packet_Pt1
☐ Sunshine.posse	02/06/2008	03:25 PM	1,641,754	☐ SOTF Response to 1/25/08 IDR



SOTF/SOTF/SFGC
02/12/2008 12:18 PM

To "Sunshine Posse" <sunshine_posse@gmail.com>
cc
bcc Angela Calvillo/BOS/SFGOV@SFGOV
Subject Response: IDR - Original Documents for SOTF matters

EXHIBIT 7

This e-mail is in response to your request below. Your request is for e-mails sent and received from January 26, 2008 to February 1, 2008.

We have located approximately 52 e-mails responsive to your requests. Pursuant to State and Local law, we are in the process of reviewing these records and redacting personal information such as e-mail addresses, home phone numbers and addresses. (See Cal. Gov. Code §§ 6250, 6254(c), 6254 (k), Cal. Const., Art. I, § 1, and San Francisco Administrative Code § 67.1(g)). This may require that we print out e-mail records, which require redaction. When possible, redacted e-mails will be forwarded via e-mail with the word "Redacted" used to replace information that has been redacted. Non-redacted e-mails will be forwarded to you on a rolling basis. We will notify you when the e-mail records that require redaction and/or other correspondence that exist only in paper are available for pickup, in the office of the Clerk of the Board.

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
"Sunshine Posse" <sunshine.posse@gmail.com>



"Sunshine Posse"
<sunshine.posse@gmail.com>
m>
02/01/2008 07:08 PM

To SOTF <sotf@sfgov.org>
cc
Subject Re: Response: IDR - Original Documents for SOTF matters

Please consider this an extension of this request to include all requested material from Jan 26th - 2/1.



SOTF/SOTF/SFGOV
02/12/2008 11:53 AM

To "Sunshine Posse" <sunshine.posse@gmail.com>
cc
bcc
Subject Re: SOTF Response to 1/25/08 IDR

EXHIBIT 8

Attached is the MS Word version of the January 2008, SOTF Agendas previously sent as a PDF. Included are the agendas for the January 9, 2008, Compliance and Amendments Committee and the January 8, and 22, full Task Force meetings.



CAC_Agenda 1-9-08_v2.doc SOTF Agenda 1-8-08.doc SOTF Agenda 1-22-08.doc

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
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http://www.sfgov.org/site/sunshine_form.asp?id=34307
"Sunshine Posse" <sunshine.posse@gmail.com>



"Sunshine Posse"
<sunshine.posse@gmail.com>
>
02/06/2008 08:13 PM

To SOTF <sotf@sfgov.org>, "Allen Grossman" <grossman356@mac.com>, "Wayne Lanier" <w_lanier@pacbell.net>, kimo@webnetic.net, "home@prosf.org" <home@prosf.org>
cc
Subject Re: SOTF Response to 1/25/08 IDR

Also we notice that the Agenda provided is in a PDF format, What other formats does it exist as? Obviously there is an HTML version on the website and it seems likely a .txt or Word version was created. What versions can we choose from?



SOTF/SOTF/SFGOV
02/12/2008 01:23 PM

To "Sunshine Posse" <sunshine.posse@gmail.com>
cc
bcc Angela Calvillo/BOS/SFGOV@SFGOV
Subject Re: SOTF Response to 1/25/08 IDR

EXHIBIT 9

The following is in response to your e-mail below.

In accordance with the Public Records Act and the Sunshine Ordinance, this office has responded to your public records request, including providing all relevant code sections. We have sent you a total of 31 e-mails containing approximately 250 e-mails sent and received by this office, and agenda's, packets and minutes of all Task Force and committee meetings held in January 2008 (122+mb). You were also informed that digital recordings for two of the meetings are available on CD (\$1), that 74 pages of meeting notes are available (\$7.40), and there are approximately 167 pages of communications that exist only on paper (\$16.70) that are available for pick up in the office of the Clerk of the Board.

We realize that you may not completely agree with some aspects of the departments response. This office tries to reasonably assist requestors access to public records, and has made a diligent effort to meet all of your requests. However, there is no requirement that we engage in ongoing dialogue with a requestor who may disagree with a department's response to a request or its handling of a request. To conserve the finite staff resources of the Clerk's Office and the Sunshine Ordinance Task Force and to remain able to perform the many public duties, this Office will limit our response to the extent the law requires.

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
"Sunshine Posse" <sunshine.posse@gmail.com>



"Sunshine Posse"
<sunshine.posse@gmail.com>
>
02/06/2008 08:09 PM

To SOTF <sotf@sfgov.org>, "Allen Grossman" <grossman356@mac.com>, "Wayne Lanier" <w_lanier@pacbell.net>, kimo@webnetic.net, "home@prosf.org" <home@prosf.org>
cc
Subject Re: SOTF Response to 1/25/08 IDR

Thank you.

We sent two requests asking that you coordinate with us before transmittting the document,

Why did you ignore those requests?

Please see the attached City Wide Website recently adopted by COIT in January which we believe will address the redaction of email addresses. It says if a citizen contacts the government by city website that the information provided including contact info is public record - therefore will not be redacted.

Your redaction of personal email addresses requires an express permissive exemption under

Sunshine 67.26 A general statement of Right to Privacy is not an express permissive exemption. Redacting for privacy also requires applicable facts, balancing tests to be applied for *each* redaction.

We did not and do not consent to paper copies of documents and will not agree to the 10 cent charge.

For Paper only documents we request that you provide them as scanned PDF which is just the same as copying a document We all know it is just a different button on the same machine. Please see 67-21-1 which states that it is city policy to distribute records on the internet and strongly encourages using technology to reduce cost of disclosure . And 67.26 disallows charging for staff time for responding to Public Records requests.

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 (*not limited to Electronic 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:...

(3) Implementing a system that permits making records (*not limited to Electronic Records*) available through the largest non-profit, non-proprietary public computer network, consistent with the requirement for security of information.

67.26

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 the digital audio again under 67.21 L, 67.21-1 and 6253.9 we request that it be either posted on the SOTF website, on an alternate city site like the Library or even Archive.org or that it be send with the free <http://www.sendthisfile.com/> site which has no file size limit. We have other ways the file can be sent if these do not work. Please note the city has already been sued for SFPL public records and provided them ultimately as FTP transfer protocol. Please provide the sizes of each file seperately so we can suggeste the easiest way to send it.

You have not addressed records that have been deleted that are on archive - either emails or voicemails or fax logs. Please address retrieve these and provide copies of all requests to retrieve such information.

on item 3, are you indicating that absolutely no visitor logs are kept for the SOTF? Previously Mr. Darby recorded visits and calls and in fact we believe this is a job requirement as well as a board

of supervisors requirement at budget time.

While Meeting packets have been provided, (thank you) we await the actual electronic emails and electronic documents that were originally sent and ultimately used to create the meeting packets.

Thank you again and we do want to work with you to limit the work required to respond to this request, we are open to suggestions.

SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227

EXHIBIT 10

January 16, 2007

Honorable Members
Sunshine Ordinance Task Force
Room 244, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

SUBJ: Complaint #06028_Kimo Crossman vs SOTF Administrator

Honorable Members:

We are submitting this letter in response to Complaint #06028, filed by Kimo Crossman against the Sunshine Ordinance Task Force Administrator.

1. Redaction of personal e-mail addresses

This office redacted personal e-mail addresses appearing in the e-mails that were disclosed to Mr. Crossman in response to his request. The redactions were based on privacy, specifically those provisions in the Public Records Act, Sunshine, and California Constitution that recognized the importance of personal privacy. Cal. Gov. Code §§ 6254(c), 6254(k); Cal. Const. Art I, § I; S.F. Admin. Code §67.1(g).

Mr. Crossman apparently seeks both the personal e-mail addresses of individuals who directly communicated with this office through e-mail, and also the personal e-mail addresses of other individuals that are included in those e-mails. If he receives the e-mail addresses, any other requester would have an equal right to obtain them. Cal. Gov. Code §6254.5. Upon receipt of the e-mail addresses, Mr. Crossman (or any other requester) would be free to disseminate those e-mail addresses to anyone else – who would, of course, be able to further disseminate them. Any desire an individual might have to maintain the confidentiality of his or her personal e-mail address would be defeated by such disclosures. If public records laws are interpreted to require disclosure of personal e-mail addresses, communicating through e-mail to a City office would come at a price: Forfeiting one's interest in maintaining the confidentiality of his or her personal e-mail address, as well as the interest of other individuals in the confidentiality of their personal e-mail addresses included in the e-mail communication.

Public records laws do not go this far in intruding on individual privacy. Because the disclosure of personal e-mail addresses implicates important privacy interests, and because public access to such information does not materially advance the monitoring of government, redaction was the appropriate course of action in this case.

Personal e-mail is most often used in the home, a special enclave of privacy that has always been afforded special protection under the law. As the Supreme Court has affirmed time and time again, “the privacy of the home ... is accorded special consideration in our Constitution, laws, and traditions,” *U.S. Dept. of Defense v. Federal Labor Relations Authority* (1994) 510 U.S. 487, 501. Disclosure of one’s personal e-mail address can intrude upon the privacy of the home in several ways. First, disclosure can result in a barrage of unwanted commercial solicitations. Second, anyone aware of a person’s e-mail address – whether harboring good or bad intentions – can become an uninvited and unwanted visitor into the person’s home. Third, the content of unwanted and unsolicited e-mails can be harassing, offensive, abusive, and even threatening to the recipient. Fourth, the sheer volume of electronic communications can be not only intrusive but also burdensome to the personal computer user who may be forced to employ filters or virus protection. Finally, the nature of the intrusion caused by unwanted e-mail can be immediate – it can appear instantaneously on the user’s computer screen in a manner that is in some ways more intrusive than a stack of junk mail lying in one’s mailbox. For all these reasons, disclosure by the government of personal e-mail addresses may intrude upon one’s privacy interest in the home and what Justice Brandeis described simply as the “right to be let alone.” *Olmstead v. United States* (1928) 277 U.S. 438, 478 (Brandeis, j., dissenting).

The Supreme Court has repeatedly emphasized that “one important aspect of residential privacy is protection of the unwilling listener. Although in many locations, we expect individuals simply to avoid speech they do not want to hear, the home is different. That we are often ‘captives’ outside the sanctuary of the home and subject to objectionable speech does not mean we must be captives everywhere. Instead, a special benefit of the privacy all citizens enjoy within their own walls, which the State may legislate to protect, is an ability to avoid intrusions. Thus, we have repeatedly held that individuals are not required to welcome unwanted speech into their own homes and that the government may protect his freedom.” *Frisby v. Schultz* (1988) 487 U.S. 474, 484-85 (citations and internal quotation marks omitted). Of course, there is no issue in this case of the validity of a state or local law designed to protect the right to seclusion in one’s home. The only issue is whether the Public Records Act in effect affirmatively authorizes electronic

intrusion into the home. There is no compelling justification in this case to tread upon the “right to be let alone.”¹

Numerous courts have recognized that the important privacy interest in a personal e-mail address warrants its redaction or other confidential treatment. *See, e.g., Knight v. NASA* (E.D. Ca. 2006) 2006 WL 3780901, Slip copy at 5-6 (upholding agency’s redaction of personal e-mail addresses in response to records request under FOIA privacy exemption); *Bitte v. United Companies Lending Corp.* (E.D. La. 2006) 2006 WL 3692754, Slip Copy at 2 (redacting plaintiff’s personal e-mail addresses from court transcript and instruction defendants’ counsel not to disclose it to defendants or use if for nonlitigation purposes); *Asis Internet Services v. Optin Global, Inc.* (N.D. Cal. 2006) 2006 WL 2792436, Slip Copy at 6, n.3 (redacting personal e-mail addresses from trial exhibits); *Chelsea Check Cashing, L.P. v. Toub* (D.N.J. 2006) 2006 WL 680530, Slip Copy at 3, n.4 (redacting counsel’s e-mail address in interest of privacy); *Montgomery County Hosp. Dist. V. Smith* (Tex. App. 2005) 181 S.W.3d 844, 846 (deleting e-mail address from text of e-mail quoted in court opinion); *In Re Enron Corporation Securities and Derivative and “ERISA” Litigation* (S.D. Tex. 2003) 2003 WL 22218315, Slip copy at 4 (disclosing personal e-mail addresses of outside directors of embattled corporation to plaintiffs but under confidentiality order); *McConnell v. Federal Elections Commission* (D.D.C. 2003) 251 F. Supp. 2d 919, 947 (permitting redaction of e-mail addresses in documents ordered to be disclosed). There is no substantial justification in this case warranting the disclosure of the personal e-mail addresses that this office redacted.²

2. Redaction of security-sensitive information in one e-mail

This office also redacted information in one e-mail that was provided to Mr. Crossman in response to his request. The redaction was based on the need to maintain the security of the e-mail system. Disclosure of the redacted information would make it easier for an unauthorized person to disrupt the operation of the e-mail system; to impersonate an e-

¹ We do not suggest that the “right to be let alone” is limited to the home, or that there is no right to privacy in personal e-mail addresses when a personal computer is being used outside the home.

² The case of *Holman v. Superior Court* (2003) 2003 WL 21509055 is in tension with the above judicial decisions, which in varying ways acknowledge that there is a significant privacy interest in personal e-mail addresses. It should be noted that in *Holman*, the Court identified particular facts persuading it that the public interest would be furthered by disclosure of personal e-mail addresses. Further, it is not clear from the *Holman* decision whether the e-mails in question contained personal e-mail addresses belonging to persons other than those in direct communication with the city government.

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mail user; to inspect without authorization e-mails in the system; and to tamper with e-mails in the system. This redaction was appropriate. Nothing in the public records laws compels a City to disclosure information that would compromise the security of its e-mail system.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Darby". The signature is fluid and cursive, with a large loop at the end.

Frank Darby, Administrator
Sunshine Ordinance Task Force



DENNIS J. HERRERA
City Attorney

PAUL ZAREFSKY
Deputy City Attorney

DIRECT DIAL: (415) 554-4652
E-MAIL: paul.zarefsky@sfgov.org

February 26, 2007

Honorable Members
Sunshine Ordinance Task Force
c/o Frank Darby, Jr., Administrator
Room 244, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re Complaint No. 07006 (Kimo Crossman v. Administrator, SOTF)

Dear Honorable Task Force Members:

This letter responds to a letter dated February 12, 2007 from Allen Grossman to the Task Force pertaining to the subject complaint. Mr. Grossman appears to assert that Section 67.21(i) of the Sunshine Ordinance precludes the City Attorney's Office from providing legal assistance to City departments with respect to public records matters, if such assistance supports or facilitates denial or redaction of a public record to a member of the public. Section 67.21(i) states in relevant part: "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 City record for purposes of denying access to the public." (S.F. Admin. Code, §67.21(i).) On the basis of this provision, Mr. Grossman asserts that it is improper for the City Attorney's Office to draft a letter to the Task Force on behalf of a City department in support of a denial or redaction of a public record, and asks the Task Force to disregard a letter submitted by Mr. Darby as Task Force Administrator in response to the subject complaint.

Mr. Grossman's legal assertions are in error. The Task Force should reject his assertions and deny his request.¹

The City Charter – the City's supreme law, equivalent to a municipal constitution – provides that the City Attorney acts as legal counsel to all departments. (S.F. Charter, §6.102.) In furtherance of this Charter-mandated role, this Office regularly provides a myriad of legal services to departments, ranging from the drafting of documents to the provision of formal and informal legal advice, on all subjects. The Charter does not suggest, much less mandate, a different or lesser role for the City Attorney in the area of public records law. And since the client of the City Attorney is the City, the City Attorney's duty is to ensure that his advice to all City departments is consistent with City law including the Sunshine Ordinance. If Section 67.21(i) were interpreted to prohibit or limit the City Attorney's Office in providing legal assistance to departments pertaining to public records law, there would be a conflict between the Charter and the Sunshine Ordinance – which, like any ordinance, is subordinate to the Charter. (*Currieri v. City of Roseville* (1970) 4 Cal.App.3d 997, 1001.) In that event, Section 67.21(i) would be invalid. But this Office, like a court, must strive to interpret Section

¹ Mr. Grossman appears to have written his letter in his capacity as an interested member of the public, rather than as counsel to the complainant. We are not familiar with the Task Force's procedures for handling a request from a member of the public that pertains to the process for hearing a specific complaint. We have chosen to respond to Mr. Grossman's letter in the event the Task Force gives consideration to his letter.

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67.21(i) in a manner that is consistent with the Charter, to avoid a conflict and thereby affirm the validity of Section 67.21(i). (*Cf. Kash Enterprises, Inc. v. City of Los Angeles* (1977) 19 Cal.3d 294, 305 [principle that ordinance should be construed if possible to preserve its constitutionality].)

Further, both federal and state law prohibit departments from disclosing certain types of records and information to the public. Other provisions of law permit a department to withhold records and information from the public. The prohibitions on disclosure and the provisions permitting nondisclosure are often technical, unclear, or complex and typically require legal interpretation when applied in particular circumstances. It is evident that departments often need legal counsel in making these determinations and in drafting letters reflecting these determinations. Interpreting the Sunshine Ordinance to preclude the City Attorney's Office from providing legal assistance on public records matters simply because in some cases that assistance would provide legal support for or facilitate a department's withholding or redacting a record would make no sense. This Office, like a court, must interpret Section 67.21(i) to avoid this absurd result. (*O'Hanesian v. State Farm Mut. Auto Ins. Co.* (2006) 145 Cal.App.4th 1305, 1313.)

In light of the City Attorney's role under the Charter as legal counsel to the City – which necessarily includes all City departments – and the provisions of federal and state law that mandate or permit nondisclosure of public records, Section 67.21(i) must not be interpreted to impose rigid constraints on the City Attorney's Office. Rather, Section 67.21(i) merely reinforces the Charter-mandated obligation of the City Attorney to the City and the public. It reflects the voters' intent to remind the City Attorney of his Charter obligation to properly advise all officials with regard to all of their legal duties, including those that arise from the Sunshine Ordinance and the Public Records Act. Therefore, where the Sunshine Ordinance, Public Records Act, or any other law forbids disclosure of a record or authorizes redaction or nondisclosure, the Sunshine Ordinance does not prevent the City Attorney from advising departments of their duties and privileges under the law, or drafting a letter in support of a department's lawful decision to withhold or redact a record. On the other hand, this Office should not facilitate, support, or advocate for a department's denial of access to a record without regard to the requirements of the law. That is what Section 67.21(i) means.

While the City Attorney's Office provides a range of legal services to departments, including drafting correspondence pertaining to legal matters, the City Attorney is not an advocate for individual departments. The client is the City as a whole. The City Attorney seeks to provide consistent, legally correct advice to all City agencies including the Sunshine Ordinance Task Force that guides all agencies in their compliance with all applicable laws, including the Sunshine Ordinance and Public Records Act. The City Attorney recognizes the importance of enforcing these and other open government laws and providing the public with access to public records in accordance with the law.

This Office's past practice with regard to matters pending before the Task Force, including the drafting of letters to be submitted to the Task Force, is consistent with this interpretation. The City Attorney does not represent departments as such before the Task Force. Rather, in providing legal assistance to a department in connection with a matter before the Task Force, this Office ultimately serves not only the department but the Task Force as well. Section 67.21(i) does not prevent the City Attorney from performing this important legal function.

Very truly yours,

DENNIS J. HERRERA
City Attorney



PAUL ZAREFSKY
Deputy City Attorney