

Date: April 22, 2008

Item No. 14

File No. 08006

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Order Of Determination Crossman vs CAO**
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Completed by: Frank Darby

Date: April 16, 2008

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

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

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

**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

**ORDER OF DETERMINATION**

**DATE THE DECISION ISSUED**

March 31, 2008

*KIMO CROSSMAN v. SAN FRANCISCO CITY ATTORNEY'S OFFICE AND THE SUPERVISOR OF RECORDS (08006)*

**FACTS OF THE CASE**

On November 30 2007, Kimo Crossman (Crossman) made an Immediate Disclosure Request ("IDR") for public records with Matt Dorsey of the City Attorney's Office. Crossman's IDR requested all materials related to a DCA Buck Delventhal meeting on 10/9/07 re: Board of Supervisors Sunshine Task Force Hearings re: Supervisor Peskin and Maxwell and any materials or communications before or after this meeting relating to the matters discussed. Kimo Crossman also requested a 15-minute phone call with DCA Delventhal to obtain oral public information.

On December 4, 2007, Alexis Thompson responded on behalf of the City Attorney's Office ("CAO") and based under Section 6253(c) of the Public Records Act and Section 67.25(b) of the Sunshine Ordinance, the CAO invoked an extension of time not to exceed 14 days to respond to the IDR.

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

**COMPLAINT FILED**

On November 6, 2007, Crossman filed a complaint against City Attorney's Office and on February 12, 2008 amended his complaint to include the Supervisor or Records alleging violations of Sections 67.1, 67.25(d), 67.26, 67.27, 67.21(a) and (b), (i), (l), 67.24(d), and 67.34 of the Sunshine Ordinance and State Government Code Sections 6253, and 6255.

**HEARING ON THE COMPLAINT**

On March 25, 2008, Complainant Crossman appeared before the Task Force and presented his complaint, specifically focusing on the redaction of attorney-client privilege and/or work product materials from e-mails that were belatedly produced by the CAO and failure of Mr. Deventhal to schedule a 15 minute phone conversation under 67.22(e). Respondent Agency was represented by Alexis Thompson who presented the Agency's defense.

The issue in the case is whether the Agency violated Section(s) 67.1, 67.21, 67.22, 67.26, 67.27, 67.29-5 and/or 67.34 of the Ordinance and/or Sections 6253 and/or 6255 of the California Public Records Act.

**ORDER OF DETERMINATION****FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based on the testimony and evidence presented the Task Force finds the testimony of Kimo Crossman to be persuasive and finds that Sections 67.21 (i) and 67.24 (b)(1)(iii) to be applicable in this case with respect to the impermissible redactions being based on attorney-client privilege and work product protection. The Task Force does not find the testimony provided by the Agency persuasive to this case. The Task Force took no action regarding the alleged violation of 67.22(e).

The Task Force finds that under the plain language of the Sunshine Ordinance, the advice the CAO gave to Supervisors and their agents regarding compliance with Open Government law is not exempt from disclosures. "All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records." See 67.21(i). "Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance." See 67.24(b)(1)(iii).

These specific statutory enactments prevail over any other applicable state law protection, including Cal. Govt. Code § 6254(k), pursuant to the terms of the Sunshine Ordinance and the California Public Records Act. See § 67.24 (providing "enhanced right of public access to information and records"); Cal. Govt. Code § 6253(e).

**DECISION AND ORDER OF DETERMINATION**

The Task Force finds that the agency violated §§ 67.21 (i) and 67.24 (b)(1)(iii) of the Sunshine Ordinance for improperly redacting attorney-client privilege and work-product from the e-mails produced. The agency shall release the records requested without redactions within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on April 9, 2008.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 25, 2008, by the following vote: (Comstock/Goldman)

Ayes: Craven, Knee, Cauthen, Comstock, Chan, Goldman, Williams

Noes: Pilpel

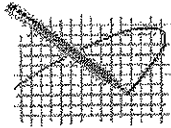
Absent: Wolfe

Excused: Chu



Doug Comstock, Chair  
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney  
Kimo Crossman, Complainant  
Alexis Thompson, Deputy Press Secretary



Paula  
Jesson/CTYATT@CTYATT  
04/16/2008 05:11 PM

To kimo@webnetic.net  
cc Frank Darby/BOS/SFGOV@SFGOV, Ernest  
Llorente/CTYATT@CTYATT  
bcc  
Subject Petition to Supervisor of Records

History:  This message has been forwarded.

Dear Mr. Crossman,

Attached is the response to your petition to the Supervisor of Records sent 04/09/2008 09:36 AM regarding "Appeal: CAO Response to Order of Determination: #08006\_Kimo Crossman v. City Attorney," relating to a Buck Delventhal meeting on 10/9/07.

Paula Jesson  
Deputy City Attorney  
City and County of San Francisco  
Room 325 City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Telephone: (415) 554-6762  
Fax: (415) 554-4699  
email: paula.jesson@sfgov.org



- kcemtg.pdf



DENNIS J. HERRERA  
City Attorney

PAULA JESSON  
Deputy City Attorney

DIRECT DIAL: (415) 554-6762  
E-MAIL: paula.jesson@sfgov.org

## MEMORANDUM

TO: Kimo Crossman  
FROM: Paula Jesson  
Deputy City Attorney  
DATE: April 16, 2008  
RE: Petition to Supervisor of Records

---

On November 30, 2007, you requested that the City Attorney's Office provide "all materials related to the Buck Delventhal meeting on 10/9 're Board of Sups Sunshine Task Force hearing re Sup Peskin and Maxwell' 1.75 hours. And any materials or communications before or after this meeting relating to the matters discussed."

On February 14, 2008, Ms. Alexis Thompson of the City Attorney's Office responded to your request, informing you that the meeting referred to in your request was an e-mail exchange among several Deputy City Attorneys, that the e-mails that constituted that exchange are attorney work product, which the law protects from disclosure under California Government Code Section 6254(k) and California Code of Civil Procedure Section 2018.030, and that the City Attorney's Office therefore declined to disclose those records.

In the same February 14, 2008 response, Ms. Thompson informed you that the office had located e-mail inquiries from clients that had instigated the 10/9 e-mail discussion and was providing you with those communications. One page of the e-mail messages sent to you had two parts of a page redacted.

In a March 27, 2008 Order of Determination, the Sunshine Ordinance Task Force found that the City Attorney's Office violated the Sunshine Ordinance by "improperly redacting attorney-client privilege and work-product from the e-mails produced."

You filed your petition on April 9, 2008, stating that you were filing an appeal to the Supervisor of Records "[n]ow that the SOTF has ruled on this matter in my favor . . ." You asked that the Supervisor of Records "justify any further withholdings taking into account the independent authority of SOTF to adjudicate these matters."

We understand your petition to seek a review by the Supervisor of Records of the actions that are the subject of the March 27, 2008 Sunshine Ordinance Task Force Order of Determination. The Order of Determination states in relevant part:

The Task Force finds that the [City Attorney's Office] violated §§ 67.21(i) and 67.24(b)(1)(iii) of the Sunshine Ordinance for improperly redacting attorney-client privilege and work-product from the e-mails produced. The agency shall release the records requested without redactions . . ."

## Memorandum

TO: Kimo Crossman  
DATE: April 16, 2008  
PAGE: 2  
RE: Petition to Supervisor of Records

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As the quoted portions from the Order shows, the Task Force issued its order based on the understanding that the City Attorney's Office redacted portions of the e-mails produced based on the attorney-client privilege and the attorney work product doctrine and, in addition, that the redacted material involved the advice of this office on Sunshine matters. In fact, the Task Force misunderstood the facts.

When this office transmitted the e-mails to you in response to your public records request, Ms. Thompson noted as follows:

"We have located those communications and they are attached in redacted form. The redacted material consists of communications about matters that were not the subject of the October 9<sup>th</sup> email discussion, are unrelated to public records, public meetings or ethics issues, and are protected from disclosure by the attorney-client privilege."  
[Emphasis added.]

The Order of Determination is thus based on an incorrect understanding of the facts. This office redacted the e-mails based solely on the attorney-client privilege. Moreover, the redacted material was unrelated to public records, public meetings or ethics issues. The provisions of the Sunshine Ordinance that the Task Force relied on in issuing its Order of Determination do not apply to the e-mails in question because the matter redacted does not involve public records, public meetings or ethics issues.

For these reasons, the Supervisor of Records finds that the City Attorney's Office properly redacted the records provided to you and denies your petition.

P.J.

cc: Sunshine Ordinance Task Force



DENNIS J. HERRERA  
City Attorney


ALEXIS THOMPSON  
Public Information Officer

Direct: (415) 554-4653  
Email: alexis.thompson@sfgov.org

April 8, 2008

Honorable Members, Sunshine Ordinance Task Force  
c/o Frank Darby, Jr., Administrator  
Sunshine Ordinance Task Force  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102-4689  
Email: SOTF@SFGov.org

**Re:** Complaint Nos. 08006

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2008 APR - 8 PM 3:13  
BY 

Dear Honorable Members of the Sunshine Ordinance Task Force,

We received your Order of Determination in the above referenced matters. For the reasons previously stated in our correspondence of February 14<sup>th</sup> and February 22<sup>nd</sup>, copies enclosed, we respectfully disagree with your Decision and Order of Determination regarding the release of attorney-client privileged communications. We stand by our earlier position, and will not be sending a representative to your committee meeting on April 9, 2008.


Very truly yours,

DENNIS J. HERRERA  
City Attorney

ALEXIS THOMPSON  
Public Information Officer



Alexis Thompson /CTYATT  
02/22/2008 02:16 PM

To <kimo@webnetic.net>  
cc  
bcc  
Subject RE: Supervisor Maxwell Public Comment/Peskin Emails =  
Buck Delventhal City Attorney advice 

Dear Mr. Crossman,

On February 14, 2008 we responded to your public records request related to "the Buck Delventhal meeting on 10/9 're Board of sups Sunshine Task Force hearings re Sup Peskin and Maxwell ." Your email message below raises seven issues about our response .

1) You ask that we provide the legal basis for each redaction . Our response does so. As we note in the message we sent to you with the document, the redaction is based on the attorney-client privilege (we also explained that we were not providing other documents based on the attorney work product doctrine ). You ask that we "key" the different bases for the different redactions. Since there is only one basis with respect to the record produced, which we explained in our message to you, there is no need to "key" it. The method of explaining the basis for redaction is consistent with Section 67.26 of the Sunshine Ordinance (exempt information must be segregated and "keyed by footnote *or other clear reference* to the appropriate justification for withholding..."(emphasis added)).

2) You ask that we be aware under the Sunshine Ordinance, communications concerning Sunshine matters are not privileged or exempt. This office disagrees with your position, has asserted the work product doctrine in responding to the request in question and in responding to prior requests, and continues to maintain that withholding under the attorney work product doctrine is permissible .

3) You note that we have provided email but not calendars, notes, memo, voicemail, etc. In light of this comment, we again queried the deputies involved in the email exchange. We found only one other document: time billing entries for one of the deputies involved in the email exchange. A copy of those entries is sent with this message. The other deputies who participated in the email discussion did not have any time billing entries--nor other documents--referring to the email discussion.

4) You contend that you are entitled to have a 15-minute phone call with Deputy City Attorney Buck Delventhal to obtain oral public information. Our response noted that such action is not required under Section 67.22(a) of the Sunshine Ordinance. In your message below, you state that your request is made under 67.20(b), which defines "Public Information." Nothing in Section 67.20(b) gives you a right to meet with a specific attorney in this office. Our obligation regarding the release of oral public information is set forth in section 67.22, which does not require compliance with your request for the reasons provided to you in our response.

5) You ask for an indication that our search of records includes searching archive media and document search phrases and keywords used to perform the search. The policy and practice of this office is to make a reasonable, good faith effort to locate every document responsive to a public records request. We have done so in response to your request.

6) You ask, pursuant to Section 67.21(c) of the Sunshine Ordinance, for a written summary of all relevant records including quantity, whether or not exempt from disclosure. That provision is intended to assist requesters in finding out enough about categories of records in a department's possession so that the requester can then submit a request that reasonably identifies the record or categories of records being sought. It does not require the creation of a privilege log or similar listing of records withheld from disclosure (as we note in the *Good Government Guide*, 2007-2008 Edition, at page 71: "A responding department withholding records has no duty to create a privilege log identifying the withheld records .").

7) You ask for an explanation for why it took so long to respond to this request. During this time period, this office has also spent considerable time responding to complaints that you have filed at the Task



Force, petitions you have submitted to the Supervisor of Records, and public records requests you have made of City departments we advise. We must allocate our limited resources in a manner that serves the needs of all San Franciscans, not simply the need to fulfill multiple requests of a single individual, which tend to expand into requests about requests that take up even more resources of this office. We recognize that there is a backlog of your requests that we are working on, and will do our best within the confines of our limited resources and other obligations to respond quickly.



DGTIME.pdf

Best,  
ALEXIS THOMPSON  
Deputy Press Secretary

---

OFFICE OF CITY ATTORNEY DENNIS HERRERA  
San Francisco City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682

(415) 554-4653 Direct  
(415) 554-4700 Reception  
(415) 554-4715 Facsimile  
(415) 554-6770 TTY

<http://www.sfgov.org/cityattorney/>  
"Kimo Crossman" <kimo@webnetic.net>



"Kimo Crossman"  
<kimo@webnetic.net>

02/14/2008 11:21 PM

Please respond to  
<kimo@webnetic.net>

To "Alexis Thompson" <Alexis.Thompson@sfgov.org>, <cityattorney@sfgov.org>, <paula.jesson@sfgov.org>  
cc "Allen Grossman" <grossman356@mac.com>, "Christian Holmer" <mail@csrsf.com>, <frandacosta@att.net>, <patnlisa@sbcglobal.net>, "Richard A. Knee" <rak0408@earthlink.net>, <SCau1321@aol.com>, <Dougcoms@aol.com>, <elc@lrolaw.com>, <jeffente@att.net>

Subject RE: Supervisor Maxwell Public Comment/Peskin Emails = Buck Delventhal City Attorney advice

Additionally I wish to know on what legal basis the Supervisor of Records refused to issue a determination in ten days nor referred to enforcement to the DA if for no response in another five days.

**From:** Kimo Crossman [mailto:kimo@webnetic.net]

**Sent:** Thursday, February 14, 2008 7:53 PM

**To:** 'Alexis Thompson'; cityattorney@sfgov.org; paula.jesson@sfgov.org

**Cc:** 'Allen Grossman'; 'Christian Holmer'; frandacosta@att.net; patnlisa@sbcglobal.net; 'Richard A. Knee'; 'SCau1321@aol.com'; Dougcoms@aol.com; elc@lrolaw.com; jeffente@att.net

**Subject:** Supervisor Maxwell Public Comment/Peskin Emails = Buck Delventhal City Attorney advice

Staff Time Data

Date	File#	Title	Dept	Cat	Hours Description
10/9/2007	9940005	Prop G - Board of Supervisors	BOARD	R - Research	0.50 research re constituent correspondence/BOS record retention issues
10/9/2007	9940005	Prop G - Board of Supervisors	BOARD	MEM - Memo	0.50 rev/respond to emails from Dleventhal, Zarefsky et al re retention of constituent correspondence, BOS record retention
					<u>1.00</u> Subtotal
					<u>1.00</u> Total Hours
Department recap					Hours
BOARD Board of Supervisors (01)					1.00



Alexis Thompson /CTYATT

02/14/2008 11:30 AM

To kimo@webnetic.net

cc

bcc

Subject November 30, 2007 Request for Records

Dear Mr. Crossman,

Your request, citing a time billing entry for Deputy City Attorney Buck Delventhal, seeks materials related to "the Buck Delventhal meeting on 10/9 're Board of Sups Sunshine Task Force hearings re Sup Peskin and Maxwell." The meeting was an email exchange among several Deputy City Attorneys. The emails that constituted that exchange are attorney work product, which the law protects from disclosure. (Cal. Gov. Code Section 6254(k); Cal. Code Civ. Pro. Section 2018.030.) Accordingly, we decline to disclose them.

You have also asked for materials and communications "before or after" the October 9<sup>th</sup>, 2007 "meeting" that relate to the matters discussed. Email inquiries from our clients instigated the October 9<sup>th</sup> email discussion. We have located those communications and they are attached in redacted form. The redacted material consists of communications about matters that were not the subject of the October 9<sup>th</sup> email discussion, are unrelated to public records, public meetings or ethics issues, and are protected from disclosure by the attorney-client privilege. (Cal. Gov. Code Section 6254(k); Cal. Evid. Code Section 954.) We have located no responsive documents created after the October 9<sup>th</sup> email discussion.

You also request a "15 minute phone call with Mr. Delventhal to obtain Oral public info." We assume that you are making this request under San Francisco Administrative Code Section 67.22(a). That Section requires each City department to designate "a person or persons knowledgeable about the affairs of the department, to provide information, including oral information, to the public about the department's operations, plans, policies and positions."

Under Section 67.22(a), each department must assign a department employee who is generally knowledgeable about the department's affairs to provide oral information to members of the public seeking public information. Section 67.22 (a) does not compel a City department to make available to the public a specific employee who has been requested. If you wish to receive oral public information about the Office of the City Attorney, please contact me directly at (415) 554-4653.



2008-02-14DCCS.pdf

Best,  
ALEXIS THOMPSON  
Deputy Press Secretary

---

OFFICE OF CITY ATTORNEY DENNIS HERRERA  
San Francisco City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682

(415) 554-4653 Direct  
(415) 554-4700 Reception  
(415) 554-4715 Facsimile  
(415) 554-6770 TTY



Jon  
Lau/BOS/SFGOV@SFGOV  
09/13/2007 05:55 PM

To Paul Zarefsky/CTYATT@CTYATT  
cc  
bcc  
Subject sunshine ordinance issues/procedures

paul:

thanks for your call-back. i'm actually going to be out of the office tomorrow (friday), so we'll follow-up next week.

cheers,  
jon

---

Jonathan O. Lau  
Legislative Assistant,  
Office of Supervisor Sophie Maxwell  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

e.mail: [jon.lau@sfgov.org](mailto:jon.lau@sfgov.org)  
ph: 415-554-7672  
fax: 415-554-7674



Jon  
Lau/BOS/SFGOV@SFGOV  
09/20/2007 03:37 PM

To Paul.Zarefsky/CTYATT@CTYATT  
cc  
bcc  
Subject Fw: sunshine task force

paul:

fyi, below is a note from the Sunshine Task Force regarding the matter we've been playing phone tag about. let's follow-up when you have a chance.

thanks,  
jon

---

Jonathan O. Lau  
Legislative Assistant,  
Office of Supervisor Sophie Maxwell  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

e.mail: jon.lau@sfgov.org  
ph: 415-554-7672  
fax: 415-554-7674

----- Forwarded by Jon Lau/BOS/SFGOV on 09/20/2007 03:37 PM -----



SOTF/SOTF/SFGOV  
09/20/2007 02:11 PM

To Jon Lau/BOS/SFGOV@SFGOV  
cc  
Subject Fw: sunshine task force

Hi Jon,

The Task Force is interested in knowing what is being done to ensure fairness, transparency and orderly administration of public comment, with regards to the handling of speaker cards during public comment at the Land Use and Economic Development Committee meetings. Their interest is based on allegations presented to them in two complaints that speakers have been called out of order during public comment.

The Task Force urged Supervisor Maxwell to adopt clear policies and regulations to provide for a transparent and orderly administration of public comment.

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](http://www.sfgov.org/site/sunshine_form.asp?id=34307)



Jon Lau/BOS/SFGOV

09/12/2007 02:59 PM

To Frank Darby/BOS/SFGOV@SFGOV

cc

Subject Fw: sunshine task force

thanks, frank. and one related request for you: can you please submit something written that explains the request of the committee. that would be helpful to us in developing our response.

cheers,  
jon

---

Jonathan O. Lau  
Legislative Assistant,  
Office of Supervisor Sophie Maxwell  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

e.mail: [jon.lau@sfgov.org](mailto:jon.lau@sfgov.org)  
ph: 415-554-7672  
fax: 415-554-7674

Paul Zarefsky/CTYATT  
09/27/2007 03:47 PM

To Jon Lau/BOS/SFGOV@SFGOV  
cc Cheryl Adams/CTYATT@CTYATT  
bcc  
Subject Re: two upcoming items

Sorry, Jon, I've been swamped on things. My suggestion would be that we meet (or talk on the phone) sometime tomorrow on the speaker cards issue. What would work for you?

Deputy City Attorney Paul Zarefsky  
City and County of San Francisco  
Room 234, City Hall - 1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Phone: (415) 554-4652 Fax: (415) 554-4747  
E-mail: paul.zarefsky@sfgov.org  
Jon Lau/BOS/SFGOV@SFGOV



Jon  
Lau/BOS/SFGOV@SFGOV  
09/27/2007 03:38 PM

To Paul Zarefsky/CTYATT@CTYATT  
cc Cheryl Adams/CTYATT@CTYATT  
Subject two upcoming items

hey, paul:

also, the next committee of the sunshine task force is Oct.10. we'd love to have some response crafted for them by that time regarding the "speaker card handling procedures" issue that i mentioned.

thanks a lot,  
jon

---

Jonathan O. Lau  
Legislative Assistant,  
Office of Supervisor Sophie Maxwell  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

e.mail: jon.lau@sfgov.org  
ph: 415-554-7672  
fax: 415-554-7674

Paul Zarefsky/CTYATT  
10/09/2007 05:39 PM

To Jon Lau/BOS/SFGOV@SFGOV  
cc  
bcc  
Subject follow-up

Jon, I didn't hear back from you re the public comment/speaker card issue. Why don't you give me a call. My understanding is that it's before the Compliance and Amendments Committee tomorrow. Try my office phone first but if necessary call my cell 378-9607. Thanks.

Deputy City Attorney Paul Zarefsky  
City and County of San Francisco  
Room 234, City Hall - 1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Phone: (415) 554-4652 Fax: (415) 554-4747  
E-mail: paul.zarefsky@sfgov.org



David  
Noyola/BOS/SFGOV@SFGO  
V

09/17/2007 11:02 AM

To Paul Zarefsky/CTYATT@CTYATT

cc

bcc

Subject Fw: DCA Jurisdictional: #07057\_Jeff Ente v. Supervisor  
Aaron Peskin

David Noyola  
Office of Supervisor Aaron Peskin  
City Hall, Room 256  
San Francisco, CA 94102  
t. 415.554.7451  
f. 415.554.7454

— Forwarded by David Noyola/BOS/SFGOV on 09/17/2007 11:07 AM —

SOTF/SOTF/SFGOV

08/03/2007 06:29 PM

To Aaron Peskin/BOS/SFGOV@SFGOV, David  
Noyola/BOS/SFGOV@SFGOV, jeffente@att.net

cc

Subject DCA Jurisdictional: #07057\_Jeff Ente v. Supervisor Aaron  
Peskin

Attached is a copy of the Deputy City Attorney's Jurisdictional Letter to the Complaint Committee. This complaint will be heard by the committee on:

Date: Tuesday, August 14, 2007  
Location: City Hall, Room 406  
Time: 4:00 P.M.

Any support documents to be considered by committee members, prior to the meeting, must be submitted by 4:00 PM Tuesday, August 7, 2007.



07057\_DCA Jurisdictional.pdf

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

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[http://www.sfgov.org/site/sunshine\\_form.asp?id=34307](http://www.sfgov.org/site/sunshine_form.asp?id=34307)



CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA  
City Attorney

OFFICE OF THE CITY ATTORNEY

ERNEST H. LORENIE  
Deputy City Attorney

Direct Dial: (415) 554-4236  
E-MAIL: [ernest.lorenie@sf.gov](mailto:ernest.lorenie@sf.gov)

August 2, 2007

Sue Cauton, Chair  
Members of the Complaint Committee

Re: Jeff Ente v Supervisor Awron Peskin (07057)

Dear Chair Cauton and Members of the Complaint Committee:

This letter addresses the issue of whether the Sunshine Ordinance Task Force ("Task Force") has jurisdiction over the complaint of Jeff Ente against the San Francisco Supervisor Awron Peskin.

**BACKGROUND**

On June 5, 2007, Supervisor Peskin during Board discussions about Ordinance 0133-07, file # 070466 addressed his colleague by stating: "I would direct you to e-mails that come from expert ornithologists and avian experts from around the county who have indicated that this legislation is indeed necessary". On June 8, 2007, Jeff Ente requested that e-mails that he mentioned on June 5, 2007. On July 14, 2007, Peskin aide David Noyola responded with an e-mail stating that "once a legislative issue is settled, he (Peskin) usually discards related e-mails. On July 19, 2007 Noyola stated to Ente that "We have responded to the request with all responsive documents we have. Ente does not believe that the Supervisor's office had released all the relevant e-mails.

**COMPLAINT**

Complainant filed a complaint against Supervisor Peskin alleging violations of the Sunshine Ordinance.

**SHORT ANSWER**

Based on Complainant's allegation and the applicable sections of the Sunshine Ordinance and the California Public Records Act, which are cited below, the Sunshine Ordinance Task Force *does* have jurisdiction over the allegation. The allegations are covered under 67.21 of the Ordinance. The Supervisor had the requested e-mails and allegedly disclosed what it had in its possession at the time of the request. The complainant does not believe that all e-mails have been released. The Task Force will have to determine if Supervisor Peskin fully complied with the public records request.

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

Letter to the Complaint Committee

Page 2  
August 2, 2007

**DISCUSSION AND ANALYSIS**

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

The Sunshine Ordinance is located in the San Francisco Administrative Code Chapter 67. All statutory references, unless stated otherwise, are to the Administrative Code. Section 67.21 generally covers requests for documents

In this case, Jeff Ente made a request for e-mails related to specific legislation that Supervisor Peskin was advocating. After some delay, Jeff Ente received some e-mails. However, Jeff Ente does not believe that all of the e-mails currently in the possession of the supervisor was released. The Task Force has jurisdiction to hear the case. The Task Force will have to determine if Supervisor Peskin fully complied with the public records request.



"Kimo Crossman "  
<kimo@webnetic.net>  
04/08/2008 04:19 PM

To "Alexis Thompson" <Alexis.Thompson@sfgov.org>,  
"SOTF" <sotf@sfgov.org>  
<Ernest.llorente@sfgov.org>, "Matt Dorsey"  
cc <Matt.Dorsey@sfgov.org>, "Paula Jesson"  
<Paula.Jesson@sfgov.org>, "SOTF" <sotf@sfgov.org>,  
bcc  
Subject RE: Order of Determination: #08006\_Kimo Crossman v. City  
Attorney

Ms. Thompson

Now that the SOTF has made its determination judging all the facts and arguments, your office is required to follow as specified under the Sunshine Ordinance which has the weight of State Law 6253 (e).

Additionally, your office has provided no legal reasoning to justify your new refusal.

Please bring people from your office who can speak with authority on this matter unlike your previous presentations..



DENNIS J. HERRERA  
City Attorney

ALEXIS P. THOMPSON  
Deputy Press Secretary

DIRECT DIAL: (415) 554-4653

E-MAIL: alexis.truchan@sfgov.org

February 19, 2008

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

Dear Honorable Members of the Sunshine Ordinance Task Force:

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

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

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

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

Very truly yours,

Alexis Thompson  
Deputy Press Secretary



DENNIS J. HERRERA  
City Attorney

MATT DORSEY  
Public Information Officer

January 12, 2006

Mr. Kimo Crossman  
Transmitted via email and U.S. Postal Service

Dear Mr. Crossman:

Over the past several months, you have made more than 50 public records requests to a number of City departments, including the Department of Telecommunications and Information Systems (DTIS), the San Francisco Public Utilities Commission (SFPUC) and this office. Beginning with documents relating to the wireless broadband component of the TechConnect initiative, your requests have subsequently expanded in scope, complexity and frequency to include, most recently, documents related to every public records request received by the City Attorney's Office over the last two years.

Many of your requests include numerous subparts—in some cases, as many as eleven—which, together with related questions, easily push your total number of discrete requests into the hundreds. As you know, almost all of your requests are styled as “immediate disclosure requests,” demanding a response by the close of business the following day, placing immediate and inescapable burdens on City employees, and hampering the ability of the departments to perform their functions. More recently you have quarreled with the specific format of electronic documentation the City has already provided you. You have insisted on the provision of electronic “metadata” from emails and other documents requiring technical expertise far beyond that of most standard office program end-users (myself included) and that may implicate attorney work-product privileges or other prohibitions against disclosure. You make insufficiently specific references to questions buried in email chains so lengthy and heavily annotated as to be virtually incomprehensible.

By now you are well aware that your requests have placed enormous burdens on the resources of this office as well as other city departments. We have responded to your requests diligently and courteously, and have devoted as many resources as could be made available to the tasks your requests have required: analysis of increasingly complex requests; consultation with persons who could assist in providing responses; searching for potentially responsive records; reviewing records when located; preparing written responses to your requests; and disseminating responsive records. In some instances, this office and our client departments have been able to provide a complete response within a single business day. In other instances, we have found it necessary to invoke a 14-day extension permitted under certain circumstances.

Letter to Mr. Kimo Crossman

Page 3

January 12, 2006

Mindful of our obligations to all the residents of San Francisco and the considerable time and resources we have already devoted to responding to your requests, this letter serves to notify you that the City Attorney has advised our client departments that they may limit the time they spend responding to your public records requests to a reasonable amount of time that permits them to perform their other duties. This office similarly intends to limit the time we spend responding to your public records requests as necessary to allow us to perform our other work.

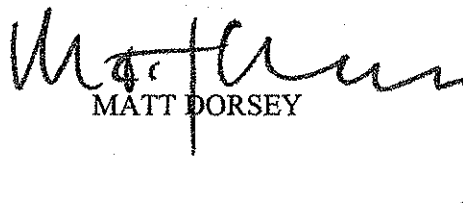
We will also advise our client departments that, before they devote significant resources to responding to your new requests, they should complete their responses to your outstanding requests. Our office will follow the same procedure. Given the volume, scope and frequency of your requests, which show no signs of abating, this reasonable allocation of resources will inevitably result in missed deadlines. If you wish our client departments or our office to focus on a new request, then you should inform us that you wish us to suspend work on prior requests in order to address the new one.

I finally wish to express that we take these steps reluctantly and only after ten weeks of unrelenting and burdensome requests. In recent years, this office has been widely praised for its commitment to Sunshine and open government. Indeed, the current City Attorney broke longstanding tradition in making legal opinions available online. He began publication of an annual Good Government Guide, and dramatically expanded Sunshine training for city officials. He ended the practice of representing department heads in hearings before the Sunshine Ordinance Task Force. And he insisted that the public information office he hired me to lead continues to earn its reputation as one of City government's most accessible and responsive to the news media and public it serves.

As an office deeply committed to open government and public scrutiny—including transparency in the City's contracting process—we are profoundly saddened that what appears to be a vexatious abuse of the San Francisco Sunshine Ordinance has forced the assertion of a limiting principle; in this case, the doctrine of implied rule of reason, well established in California case law, which sets reasonable limits for responding to public records requests.

We invite reasonableness in your future public records requests to enable us to complete our responses to those already outstanding. Further, we hope you will consider withdrawing or narrowing some of your prior public records requests to facilitate the City's ability to respond to your core requests, and we welcome your guidance in identifying priorities among your multiple requests already queued for response.

Sincerely,

  
MATT DORSEY

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](http://www.sfgov.org/site/sunshine_form.asp?id=34307)



Jon Lau/BOS/SFGOV  
09/12/2007 02:59 PM

To Frank Darby/BOS/SFGOV@SFGOV  
cc  
Subject Fw: sunshine task force

thanks, frank. and one related request for you: can you please submit something written that explains the request of the committee. that would be helpful to us in developing our response.

cheers,  
jon

---

Jonathan O. Lau  
Legislative Assistant,  
Office of Supervisor Sophie Maxwell  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

e.mail: [jon.lau@sfgov.org](mailto:jon.lau@sfgov.org)  
ph: 415-554-7672  
fax: 415-554-7674



Jon  
Lau/BOS/SFGOV@SFGOV  
09/13/2007 05:55 PM

To Paul Zarefsky/CTYATT@CTYATT  
cc  
bcc  
Subject sunshine ordinance issues/procedures

paul:

thanks for your call-back. i'm actually going to be out of the office tomorrow (friday), so we'll follow-up next week.

cheers,  
jon

---

Jonathan O. Lau  
Legislative Assistant,  
Office of Supervisor Sophie Maxwell  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

e.mail: jon.lau@sfgov.org  
ph: 415-554-7672  
fax: 415-554-7674



David  
Noyola/BOS/SFGOV@SFGO  
V

09/17/2007 11:02 AM

To Paul Zarefsky/CTYATT@CTYATT

cc

bcc

Subject Fw: DCA Jurisdictional: #07057\_Jeff Ente v. Supervisor  
Aaron Peskin

David Noyola  
Office of Supervisor Aaron Peskin  
City Hall, Room 256  
San Francisco, CA 94102  
t. 415.554.7451  
f. 415.554.7454


— Forwarded by David Noyola/BOS/SFGOV on 09/17/2007 11:07 AM —

SOTF/SOTF/SFGOV

08/03/2007 06:29 PM

To Aaron Peskin/BOS/SFGOV@SFGOV, David  
Noyola/BOS/SFGOV@SFGOV, jeffente@att.net

cc

Subject DCA Jurisdictional: #07057\_Jeff Ente v. Supervisor Aaron  
Peskin 

Attached is a copy of the Deputy City Attorney's Jurisdictional Letter to the Complaint  
Committee. This complaint will be heard by the committee on:

Date: Tuesday, August 14, 2007  
Location: City Hall, Room 406  
Time: 4:00 P.M.

Any support documents to be considered by committee members, prior to the meeting, must be  
submitted by 4:00 PM Tuesday, August 7, 2007.



07057\_DCA Jurisdictional.pdf

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](http://www.sfgov.org/site/sunshine_form.asp?id=34307)



Jon  
Lau/BOS/SFGOV@SFGOV  
09/20/2007 03:37 PM

To Paul Zarefsky/CTYATT@CTYATT  
cc  
bcc  
Subject Fw: sunshine task force

paul:

fyi, below is a note from the Sunshine Task Force regarding the matter we've been playing phone tag about. let's follow-up when you have a chance.

thanks,  
jon

---

Jonathan O. Lau  
Legislative Assistant,  
Office of Supervisor Sophie Maxwell  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

e.mail: jon.lau@sfgov.org  
ph: 415-554-7672  
fax: 415-554-7674

----- Forwarded by Jon Lau/BOS/SFGOV on 09/20/2007 03:37 PM -----



SOTF/SOTF/SFGOV  
09/20/2007 02:11 PM

To Jon Lau/BOS/SFGOV@SFGOV  
cc  
Subject Fw: sunshine task force

Hi Jon,

The Task Force is interested in knowing what is being done to ensure fairness, transparency and orderly administration of public comment, with regards to the handling of speaker cards during public comment at the Land Use and Economic Development Committee meetings. Their interest is based on allegations presented to them in two complaints that speakers have been called out of order during public comment.

The Task Force urged Supervisor Maxwell to adopt clear policies and regulations to provide for a transparent and orderly administration of public comment.

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

Paul Zarefsky/CTYATT  
09/27/2007 03:47 PM

To Jon Lau/BOS/SFGOV@SFGOV  
cc Cheryl Adams/CTYATT@CTYATT  
bcc  
Subject Re: two upcoming items

Sorry, Jon, I've been swamped on things. My suggestion would be that we meet (or talk on the phone) sometime tomorrow on the speaker cards issue. What would work for you?

Deputy City Attorney Paul Zarefsky  
City and County of San Francisco  
Room 234, City Hall - 1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Phone: (415) 554-4652 Fax: (415) 554-4747  
E-mail: paul.zarefsky@sfgov.org  
Jon Lau/BOS/SFGOV@SFGOV



Jon  
Lau/BOS/SFGOV@SFGOV  
09/27/2007 03:38 PM

To Paul Zarefsky/CTYATT@CTYATT  
cc Cheryl Adams/CTYATT@CTYATT  
Subject two upcoming items

hey, paul:

also, the next committee of the sunshine task force is Oct. 10. we'd love to have some response crafted for them by that time regarding the "speaker card handling procedures" issue that i mentioned.

thanks a lot,  
jon

---

Jonathan O. Lau  
Legislative Assistant,  
Office of Supervisor Sophie Maxwell  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

e.mail: jon.lau@sfgov.org  
ph: 415-554-7672  
fax: 415-554-7674

Paul Zarefsky/CTYATT  
10/09/2007 05:39 PM

To Jon Lau/BOS/SFGOV@SFGOV  
cc  
bcc

Subject follow-up

Jon, I didn't hear back from you re the public comment/speaker card issue. Why don't you give me a call. My understanding is that it's before the Compliance and Amendments Committee tomorrow. Try my office phone first but if necessary call my cell 378-9607. Thanks.

Deputy City Attorney Paul Zarefsky  
City and County of San Francisco  
Room 234, City Hall - 1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Phone: (415) 554-4652 Fax: (415) 554-4747  
E-mail: paul.zarefsky@sfgov.org