

Date: April 22, 2008

Item No. 17  
File No. \_\_\_\_\_

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Administrators Report for April 2008
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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  
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**MEMORANDUM**

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**TO:** Sunshine Ordinance Task Force

**DATE:** April 22, 2008

**SUBJECT:** Administrators Report for April 2008

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1. Requests from community persons:
  - From March 19, 2008 through April 15, 2008, the Task Force's office responded to approximately 153 calls/e-mails/office visits from individuals requesting information regarding the Sunshine Ordinance, or to mediate request for records.
2. 2008 – Complaint/Potential Complaint Logs.
3. Communications Received Log
4. Order of Determinations:
  - 08015\_Deniz Bolbol vs SF Zoological Society
5. Ltr from Supervisor of Records (3/21/08)
6. SOTF By-Laws

Complaints 2008

Date Received	Complainant	Department/Respondent	Status
1/3/2008	Kimo Crossman (08001)	District Attorney	Complaint Committee 2/12/08; Task Force 2/26/08 (No formal action taken)
1/7/2008	Hank Wilson (08002)	Public Health - HPPC	Complaint Committee 2/12/08 (Withdrawn: 2/6/08)
1/10/2008	Christian Holmer (08003)	Mayor's Office	Complaint Committee 2/12/08; Task Force 2/26/08 (Withdrawn: 2/22/08)
1/10/2008	Kimo Crossman (08004, 08005, 08007)	City Attorney	Complaint Committee 2/12/08; Task Force 2/26/08 contd.; 3/25/08 violation 67.21 (a), 67.21 (l), 67.24 (b) (l) (iii); CAC 4/9/08: Referred to Task Force; Task Force 4/22/08
1/10/2008	Kimo Crossman (08005, 08004, 08007)	City Attorney	Complaint Committee 2/12/08; Task Force 2/26/08; 3/25/08 heard with 08004; CAC 4/9/08: Referred to Task Force; Task Force 4/22/08
1/10/2008	Kimo Crossman (08006)	City Attorney	Complaint Committee 2/12/08; Task Force 2/26/08 contd.; 3/25/08 violation of 67.26, 67.21 (l), 67.24 (b) (1) (iii); CAC 4/9/08: Referred to Task Force; Task Force 4/22/08
1/10/2008	Kimo Crossman (08007, 08004, 08005)	City Attorney	Complaint Committee 2/12/08; Task Force 2/26/08; 3/25/08 heard with 08004; CAC 4/9/08: Referred to Task Force; Task Force 4/22/08
1/14/2008	Stephen Worsley (08008)	Recreation and Park	Complaint Committee 2/12/08; Task Force 2/26/08 (No formal action taken)
2/9/2008	Patrick Monett-Shaw (08009)	Board of Supervisors	Complaint Committee 3/11/08 (Withdrawn: 2/26/08)
2/11/2008	Patrick Monett-Shaw (08010)	Dept. of Health	Task Force 3/25/08 (Withdrawn 3/15/08)
2/20/2008	David Waggoner (08011)	Ethics Commission	Complaint Committee 3/11/08; Task Force 3/25/08 (No formal action taken)
3/2/2008	Kimo Crossman (08012)	Clerk of th Board, SOTF Administrator	Task Force 3/25/08 (Withdrawn 3/14/08)

Complaints 2008

3/2/2008	Kimo Crossman (08013)	SOTF Administrator	Task Force 3/25/08 (Violation 67.21 (a)); CAC 4/9/08; Referred to Task Force; Task Force 4/22/08
3/4/2008	Jason Berckart (08014)	Human Rights Commission???	Pending Clarification from Complainant
3/4/2008	Deniz Bolbol (08015)	SF Zoological Society	Task Force 3/25/08 (Violation 67.25)
3/7/2008	Anonymous (08016)	SF Arts Commission	Task Force 4/22/08 (Withdrawn 3/20/08)
3/17/2008	Kimo Crossman (08017)	COB, SOTF Administrator	Task Force 4/22/08
3/17/2008	Kimo Crossman (08018)	COB, SOTF Administrator	Task Force 4/22/08
4/8/2008	Kimo Crossman (08019)	COB, SOTF-A, DTIS	Task Force 4/22/08
4/8/2008	Peter Witt (08020)	SF Taxi Commission	Task Force 4/22/08

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**ORDER OF DETERMINATION**

**DATE THE DECISION ISSUED**

March 27, 2008

*DENIZ BOLBOL v. SAN FRANCISCO ZOOLOGICAL SOCIETY (08015)*

**FACTS OF THE CASE**

On February 21, 2008 Complainant Deniz Bolbol submitted an Immediate Disclosure Request to the San Francisco Zoological Society ("SFZoo"), specifically seeking (1) The San Francisco Zoo's Collection Plan; (2) A list of zoo management personnel; (3) A list of SFZoo's steering committee members; (4) The original design plan for the African Savannah; and (5) Animal inventory. Bolbol stated that a temporary employee acknowledged that SF Zoo received the request. However as of March 4, 2008, Deniz Bolbol had not received the documents and had not been told when she might receive the documents.

**COMPLAINT FILED**

On March 5, 2008, Deniz Bolbol filed a complaint against the SF Zoo for violation of Section 67.21(a) and 67.25(b) of the Sunshine Ordinance and California Public Records Act Section 6250 et seq.

Ms. Bolbol alleged that as the SFZoo is paid by the City and County of San Francisco to manage and operate the city-owned San Francisco Zoo, and based on the San Francisco Zoo Lease and Management Agreement, the SFZoo is required to provide public access to information concerning the operation of the Zoo to the same extent that such information would have been available to the public if the Department had continued to operate the Zoo.

**HEARING ON THE COMPLAINT**

On March 25, 2008, Complainant Deniz Bolbol appeared before the Task Force and presented her claim. Ms. Bolbol indicated that the requested records had recently been produced, but wanted to proceed with her complaint to make a record on the untimely response from the SFZoo. Respondent Agency was represented by Michael Orosco who presented the Agency's defense.

The issue in the case is whether the Agency violated Section(s) 67.1, 67.21, 67.25, 67.26, and 67.27 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 that the testimony of Deniz Bolbol to be persuasive and finds that section 67.25 to be applicable in this case. The Agency did not dispute that they had failed to provide a timely response to Ms. Bolbol, and has committed to providing Sunshine Ordinance training to its managers and preventing further violations in the future.

**DECISION AND ORDER OF DETERMINATION**

The Task Force finds that the agency violated § 67.25 of the Sunshine Ordinance for failure to respond in a timely manner. The Task Force commends the Agency for putting a Sunshine Ordinance training process in place.

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

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

Excused: Chu



Doug Comstock, Chair  
Sunshine Ordinance Task Force

- c: Ernie Llorente, Deputy City Attorney
- Deniz Bolbol, Complainant
- Michael Orosco, SF Zoological Society



DENNIS J. HERRERA  
City Attorney

PAULA JESSON  
Deputy City Attorney

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## MEMORANDUM

TO: Frank Darby, Administrator  
Sunshine Ordinance Task Force

FROM: Paula Jesson *PJ*  
Deputy City Attorney

DATE: March 21, 2008

RE: Eighth Annual Report of the Supervisor of Records

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The Sunshine Ordinance Task Force held a hearing on the annual report of the Supervisor of Records at its February 26, 2008 meeting.

The Task Force continued the hearing to consider several issues. One related to e-mail communications between DTIS and Earthlink and Google. Apparently, the question that was raised regarding this issue arose out of the first petition to the Supervisor of Records discussed in the annual report, which was submitted by Kimo Crossman to DTIS.

At the February 26 hearing, I had asked that the Task Force provide further information so that we could understand and respond to the question. Yesterday, you sent me an e-mail asking that this office "[e]xplain, and provide in writing, why DTIS did not have to produce e-mail correspondence with Earthlink that did not relate to the positions of the parties during contract negotiations."

In addition, your e-mail asked that we provide "a written opinion as to whether departments can destroy e-mails or must e-mails be retained."

We address these issues in order.

### DTIS E-mail Correspondence with Earthlink Not Related to the Positions of the Parties

As noted above, the annual report included a petition to the Supervisor of Records from Mr. Crossman regarding records requested from DTIS. The petition addressed eight categories of records. The first category was "[a]ll document exchanged between the City and County of San Francisco and Earthlink in the course of contract negotiations through January 5, 2007 concerning the San Francisco 'TechConnect' project to provide free wireless internet access throughout the City."

The response to the petition addressed the issue of DTIS documents exchanged between Earthlink and the City that did not relate to the positions of the parties during contract negotiations. As to these records, the Supervisor of Records determined that they did not have to be disclosed until after the award of the contract under San Francisco Administrative Code Section 67.24(e)(1). See Exhibit A to the Eighth Annual Report of the Supervisor of Records (bottom of page 2 and top of page 3). Section 67.24(e)(1) provides as follows:

Contracts, contractors' bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has

**Memorandum  
Privileged & Confidential**

TO: Frank Darby, Administrator  
Sunshine Ordinance Task Force  
DATE: March 21, 2008  
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RE: Eighth Annual Report of the Supervisor of Records

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been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to a Request for Proposal ("RFP") has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed." [Emphasis added.]

Whether Departments Can Destroy E-mail

The second question you raise is whether departments can destroy e-mails or must retain them. None of the determinations by the Supervisor of Records addressed in the Eight Annual Report concern this issue.

The *Good Government Guide*, 2007-2008 Edition, contains a discussion of Record Retention and Destruction Laws (pages 81-85). A portion of that discussion addresses e-mail (at page 83):

**"C. E-Mail**

Any e-mail that is created or received in connection with the transaction of public business and which (1) the department retains as evidence of the department's activities, or (2) relates to the legal or financial rights of the City or of persons directly affected by the activities of the City, must be retained in accordance with the department's records retention schedule. The standard for determining if e-mail is a record that must be retained is identical to the standard that applies to any document. Govt. Code §6252(e); Admin. Code §67.20(b). If the e-mail must be retained, it should be printed out and the hard copy retained in the appropriate file unless the department can reliably retain and retrieve the e-mail in electronic format."

If you need further legal advice regarding this issue, I have informed Deputy City Attorney Llorente of this matter and he would be happy to provide assistance.

I hope this memorandum answers the questions you have raised regarding the annual report of the Supervisor of Records.

P.J.



## **By-Laws**

### **Sunshine Ordinance Task Force City and County of San Francisco**

#### **Article I – Name and Purpose**

##### **Section 1. Name**

The name of this Task Force shall be the Sunshine Ordinance Task Force.

##### **Section 2. Purpose**

The Sunshine Ordinance Task Force is established by Chapter 67 of the San Francisco Administrative Code. The Task Force shall protect the public's interest in open government and shall carry out the duties enumerated in Chapter 67 of the San Francisco Administrative Code.

#### **Article II – Officers**

##### **Section 1. Officers**

The Officers of this Task Force shall be a Chair and a Vice Chair.

##### **Section 2. Terms of Office**

The Officers shall hold offices for one year and until their successors are elected.

##### **Section 3. Election of Officers**

The Officers shall be elected at the first regular meeting of the Task Force held on or before July 1 of each year, or at a subsequent meeting, the date of which shall be fixed by the Task Force at the first regular meeting on or after July 1 of each year. If any Task Force office becomes vacant, that office shall be filled at the first meeting after the vacancy occurs.

#### **Article III – Duties of Officers**

##### **Section 1. Duties of the Chair**

The Chair shall preside at all meetings of the Task Force. The Chair, working with members of the Task Force and the staff, shall oversee the preparation and distribution of the agenda for the Task Force meetings. The Chair shall appoint all Committees and their chairs and shall perform all other duties as prescribed by the Task Force or by the By-Laws which are necessary or incident to the office. The Chair of the Task Force shall encourage Task Force members to participate on committees and shall ensure broad and diverse representation of Task Force members on all committees.

##### **Section 2. Duties of the Vice Chair**

In the event of the absence, or inability of the Chair to act, the Vice Chair shall preside at the meetings and perform the duties of the Chair. In the event of the absence of the Chair and the Vice Chair, the remaining Task Force members shall appoint one of the members to act temporarily as Chair.

## Article IV – Meetings

### Section 1. Regular Meetings

Regular meetings of the Task Force shall be held on the fourth Tuesday of the month at 4:00 p.m. at City Hall, 1 Dr. Carlton B. Goodlett Place, Room 408, San Francisco, California.

### Section 2. Special Meetings

The Chair or a majority of the members of the Task Force may call special meetings.

### Section 3. Notice of Meetings

The agendas of all regular meetings and notices and agendas of all special meetings shall be posted on the Task Force web site, at the meeting site, the San Francisco Main Library, Government Information Center and the office of the Task Force. Agendas and notices shall be mailed to each Task Force member and any person who files a written request for such notice with the Task Force.

### Section 4. Cancellation of Meetings

The Chair may cancel a meeting if she or he is informed by the Task Force Administrator that a quorum of the body will not be present or if the meeting date conflicts with a holiday or other responsibilities of the Task Force members. Notices of cancellation shall be posted on the Task Force web site, at the meeting site, the San Francisco Main Library, Government Information Center, and the office of the Task Force. If time permits, notices of meeting cancellations shall be mailed to all members of the public who have requested, in writing, to receive notices and agendas of Task Force meetings.

### Section 5. Conduct of Meetings

(a) All Task Force meetings shall be conducted in compliance with all applicable laws, including but not limited to the Ralph M. Brown Act (Government Code Section 54950 et. seq.), the San Francisco Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the Task Force's By-laws. Except where state or local laws or other rules provide to the contrary, meetings shall be governed by Robert's Rules of Order.

(b) Subject to the availability of funds, the Task Force shall comply with the provisions of the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) that apply to Charter boards and commissions.

(c) When a member of the Task Force desires to address the Task Force, she or he shall seek recognition by addressing the Chair, and when recognized, shall proceed to speak. The member shall confine her or his comments or remarks to the question before the Task Force.

(d) Cell phones and pagers shall be turned off during meetings of the Task Force. The Chair may issue a warning to any member of the public whose pager or cell phone *disrupts* the Task Force meeting. In the event of repeated disruptions caused by pagers and cell phones, the Chair shall direct the offending member of the public to leave the meeting.

## **Section 6. Setting Agendas**

The Task Force Administrator, at the direction of the Chair, shall prepare the agenda for meetings. The agenda for all regular meetings shall contain an item during which Task Force members may request items for the Task Force to consider at future meetings.

## **Section 7. Action at a Meeting; Quorum and Required Vote**

The presence of a majority of the members (six members) of the Task Force shall constitute a quorum for all purposes. The affirmative vote of a majority of the members of the Task Force (six votes) shall be required for the approval of all substantive matters. Procedural motions require an affirmative vote of a majority of the members present. If a quorum is not present, no official action may be taken, except roll call and adjournment.

## **Section 8. Voting and Abstention**

Task Force members must be present to vote and participate. Teleconference participation is not permitted. Each member present at a Task Force meeting shall vote "Yes" or "No" when a question is put, unless the member is excused from voting on a matter by a motion adopted by a majority of the members present or the member has a conflict of interest that legally precludes participation in the discussion and vote.

The Task Force shall take action on items on the agenda by roll call, voice vote or by show of hands. The minutes shall reflect how each Task Force member voted on each item.

## **Section 9. Order of Business**

The order of business at Task Force meetings shall be:

1. Call to order
2. Roll Call
3. Approval of meeting minutes
4. Report of the Chair
5. Report of the Task Force Administrator
6. Report of the Standing Committees
7. Action Items
8. Future Agenda Items
9. Public Comment
10. Adjournment

The order of items on the agenda may be changed by action of the Task Force at any meeting. Public comment shall be specially set as the first new item considered after 5:00 p.m.

## **Section 10. Hearing Procedures**

Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations. Any person speaking during a public comment period may supply a brief written summary of their comments, which shall, if no more than 150 words, be included in the minutes. (§67.16)

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing; these comments will be made a part of the official public record. (§67.7-1 (c))

- |   |                      |
|---|----------------------|
| 1. Complainant presents his/her facts and evidence.       | 5 minutes            |
| Other parties of Complainant presents facts and evidence. | Up to 3 minutes each |
| 2. City responds  | 5 minutes            |
| Other parties of City respond.                            | Up to 3 minutes each |

(The above total speaking times for Complainant and City to be the same.)

- |  |           |
|--|-----------|
| 3. Complainant presents rebuttal.  | 3 minutes |
| 4. Matter is with the Task Force for discussion, motion and deliberation.  |           |
| 5. Public Comment ( <i>Excluding Complainant and City response and witnesses.</i> )  |           |
| 6. Vote by the Task Force ( <i>Public comment at the discretion of the Chair on each motion and/or new motion if vote fails.</i> ) |           |

Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

### **Section 11. Public Comment**

The Task Force and all committees of the Task Force shall hold meetings open to the public in full compliance with state and local laws. The Task Force encourages the participation of all interested persons. Members of the public may address the Task Force on any matter within the subject matter jurisdiction of the Task Force for up to three minutes during public comment. The Chair may limit the time permitted for public comment consistent with state and local laws.

### **Section 12. Public Testimony**

The Task Force and all committees of the Task Force shall hold meetings open to the public in full compliance with state and local laws. The Task Force encourages the participation of all interested persons. Members of the public may comment on every item on the Task Force agenda. Each person wishing to speak on an item before the Task Force shall be permitted to be heard once for up to three minutes.

## **Article V -- Task Force Records**

### **Section 1. Minutes**

Minutes shall be taken at every regular and special Task Force meeting and shall comply with the provisions of the San Francisco Sunshine Ordinance, including the provisions that apply to Charter boards and commissions. (*See, San Francisco Administrative Code, Chapter 67.16*) Minutes shall be approved by the majority vote of the Task Force.

## **Section 2. Public Review File**

The Task Force shall maintain a public review file in compliance with the San Francisco Sunshine Ordinance. (See, San Francisco Administrative Code, Section 67.23.)

## **Section 3. Records Retention Policy**

The Task Force shall prepare, maintain and adopt a records retention and destruction policy as provided in Section 8.3 of the San Francisco Administrative Code.

## **Section 4. Tape Recordings**

The Task Force shall audio record all regular and special meetings of the Task Force. The audio recordings shall be maintained in accordance with the San Francisco Sunshine Ordinance. (See, San Francisco Administrative Code, Section 67.14(b).)

# **Article VI -- Committees**

## **Section 1. Standing Committees**

Upon approval by a majority of the members of the Task Force, the Task Force may form standing committees to advise the Task Force on its on-going functions. The standing committees shall be composed of members of the Task Force. Unless specified otherwise by the Task Force, the Chair of the Task Force shall name the Chair of the Standing Committees and its members. The Chair of the Task Force shall encourage Task Force members to participate on committees and shall ensure broad and diverse representation of Task Force members on all committees.

The Task Force shall establish the following Standing Committees: Rules, Public Education and Information, Complaints, and Compliance and Amendments Committee.

### **(a) Rules Committee**

The Rules Committee shall review matters related to amendments to the Task Force by-laws and procedures for Task Force meetings and shall assist the Chair of the Task Force to ensure that all annual objectives enumerated in the Sunshine Ordinance are met by the Task Force.

### **(b) Public Education and Information Committee**

The Public Education and Information Committee shall make recommendations to the Task Force regarding outreach and publicity to the media and to the general public about the Sunshine Ordinance and the Task Force.

### **(c) Complaint Committee**

The Complaint Committee shall monitor the complaint process and make recommendations to the Task Force regarding how the complaints should be handled.

### **(d) Compliance & Amendments Committee**

The Compliance and Amendments Committee shall monitor compliance with the Orders of Determination adopted by the Task Force; shall recommend to the Task Force amendments to the Sunshine Ordinance regarding enforcement of the Orders of Determination; and shall consider and recommend any other additions, amendments, and changes to the Sunshine Ordinance as provided by members of the Task Force and from the general public. (Added 8/27/02)

## **Section 2. Special or Ad Hoc Committees**

Upon approval by a majority of the members of the Task Force, the Task Force may form special or ad hoc committees. Special committees shall be formed for a specific purpose and cease to exist after completion of a designated task. Special committees may be composed of members of the Task Force.

### **Article VII – Attendance**

Members of the Task Force shall notify the Task Force Administrator if she or he is unable to attend a regular or special meeting of the Task Force. If a member of the Task Force misses more than three regular meetings in any twelve-month period of time, the Task Force may notify the Board of Supervisors and request that action be taken to remove the member from the Task Force. The Administrator of the Sunshine Ordinance Task Force shall notify any member who misses two meetings in any twelve month period of time that if the third absence occurs, the Task Force may notify the Board of Supervisors of the member's lack of attendance.

### **Article VIII - Amendment of By Laws**

The By Laws of the Task Force may be amended by a vote of a majority of the members of the Task Force after presentation of the proposed amendments as an agenda item at a meeting of the Task Force. The Task Force shall give ten days notice before considering any amendments to its by laws.

Adopted 8/22/2000  
Amended 8/27/2002  
Amended 3/25/2008