Date: April 22, 2008

Item No. 2
File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- ☒ **Draft Minutes: Task Force for March 25, 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

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SUNSHINE ORDINANCE TASK FORCE
DRAFT MINUTES

Tuesday, March 25, 2008
4:00 p.m., City Hall, Room 408

Task Force Members

Seat 1	Erica Craven (Vice Chair)	Seat 8	Bruce Wolfe
Seat 2	Richard Knee	Seat 9	Hanley Chan
Seat 3	Sue Cauthen	Seat 10	Nick Goldman
Seat 4	Vacant	Seat 11	Marjorie Ann Williams
Seat 5	Kristin Chu		
Seat 6	Doug Comstock (Chair)	Ex-officio	Angela Calvillo
Seat 7	David Pilpel	Ex-officio	Harrison Sheppard

Call to Order The meeting was called to order at: 4:02 P.M.
Roll Call Present: Craven (out at 8:30), Knee, Cauthen, Comstock, Pilpel (in at 4:10), Wolfe (in at 6:37), Chan (in at 4:36), Goldman, Williams,
Excused: Chu, Sheppard

Agenda Changes: Item 19 heard before Item 5

Deputy City Attorney: **Ernie Llorente**
Administrator: **Frank Darby**
Chris Rustom

Agenda Changes:

Kimo Crossman asked that his complaints (item #5, 6, & 8) be placed at the end of the agenda. Alexis Thompson, Press Secretary with the City Attorney's Office, objected to the delay and asked that the items be heard in their current order.

Chair Comstock said that items #5 and 6 would be heard in their current order, and item #8 will be heard after item #9.

Kimo Crossman withdrew his request for the agenda change, and asked that the agenda remain as is.

1. Approval of minutes of February 26, 2008, meeting.

Public Comment: None

Chair Comstock expressed dissatisfaction with the minutes and said that they are not as detailed as they had been in the past and only shows the action. He asked the Administrator for an explanation. Administrator Darby responded that the office has always provided action minutes, and additional information on significant discussions.

Chair Comstock asked the Administrator when he stopped digitally recording the meetings and went back to tape. Administrator Darby responded that he has always created tapes of the meetings, and that he has only been experimenting with digital recordings. He said that last month's digital recording had a gap, which is why he was provided with tapes of the meeting.

Chair Comstock, in response to Members who noted that they had technical corrections, moved that approval of the minutes be postponed to allow other Members to review his revised minutes. (Comstock/Goldman) Without objection.

Public Comment: None

Continued to the April 22, 2008 meeting, without objection.

2. Continued: Supervisor of Records (SOR) Report.

DCA Dorji Roberts, in response to Chair Comstock's inquiry over different interpretations of the Sunshine Ordinance, said it was not unusual for the City Attorney's Office (CAO) to differ with the Task Force over a matter and did not believe there was a way to ensure that the two bodies reach the same conclusion.

DCA Paula Jesson said there would always be differences because the drafters of the Sunshine Ordinance decided to have two separate decision making bodies.

Chair Comstock also wanted to know how much weight the CAO gave to decisions made by the Task Force. DCA Jesson responded that there was not much consideration given because the Task Force does not provide enough analysis as a basis for its decision. She said it would be helpful to base decisions on legal analysis.

Member Knee said the Task Force provides a legal analysis through DCA Llorente.

Public Comment: Kimo Crossman said the CAO should not have a difference of opinion from the Task Force because under 67.21 (i) the public is the client and not City departments. The problem, he said, is because the CAO is defending the departments.

DCA Llorente responded that the City Charter requires the CAO to represent departments.

Member Cauthen said the difference in opinion was evident in a case that was to be heard later in the day concerning the SOTF Administrator.

Allen Grossman said the Task Force's determinations are fact-driven. He also said the CAO's opinions are predictable because the SOR position is rotated among a select group of lawyers who only work on Sunshine matters. He added that the CAO should not ignore the decisions of the Task Force; and by doing so demonstrates a lack of professionalism.

Dan Boreen said that the CAO is a public entity responsible for acting on the public's interest. He said that departments are not the problem it's the individuals, and that the Sunshine Ordinance supercedes all local laws.

Member Pilpel thanked the SOR for providing information regarding the Laura Carroll report, and moved to accept the report.

Chair Comstock said he does not support the motion because according to item 53 of the Roberts Rules of Order he would not be endorsing the report.

Member Craven said that accepting the report does not mean that the report is being adopted or that the Task Force agrees with it.

Member Cauthen suggested a friendly amendment acknowledging receipt of the report. Member Pilpel objected to the amendment.

Motion to accept the report. (Pilpel / Craven).
Ayes: Craven, Pilpel, Goldman
Noes: Knee, Cauthen, Comstock, Chan, Williams
Absent: Wolfe
Excused: Chu

Motion failed for lack of member majority (6) vote.

Motion acknowledging receipt of the report. (Pilpel / Knee)
Craven, Knee, Cauthen, Comstock, Pilpel, Chan, Goldman, Williams
Absent: Wolfe
Excused: Chu

3. Discussion re: AB 1978

Member Knee discussed his proposed resolution.

Member Pilpel suggested sending the resolution to the State Legislation Committee in addition to the Mayor, and the Board of Supervisors and the City Attorney because it is qualified to take action.

Public Comment: Kimo Crossman thanked the Task Force for agendizing this matter and urged approval.

Member Knee thanked Mr. Crossman for bringing this matter to his attention.

Motion to adopt Member Knee's draft resolution (Comstock / Craven).
Ayes: Craven, Knee, Cauthen, Comstock, Wolfe, Chan, Goldman, Williams
Noes: Pilpel
Absent: Wolfe
Excused: Chu

4. Report from the Complaint Committee meeting of March 11, 2008.

Member Cauthen made the report.

a. Complaint Committee's recommended revisions to the Complaint Procedures.

Member Pilpel, in response to Members who indicated that they had a few technical corrections, asked that the matter be continued so that he can review the final text.

Public Comment: Mr. Crossman said he appreciated the changes, and that as a result his complaint is being heard a month earlier.

Motion to continue (Pilpel). Motion failed for lack of a second.

Motion to accept the recommended revisions. (Cauthen / Goldman).
Ayes: Craven, Knee, Cauthen, Comstock, Chan, Goldman, Williams
Noes: Pilpel
Absent: Wolfe
Excused: Chu

Member Pilpel asked that the revised procedures be submitted to Task Force Members and posted on the web site.

b. 08011 Determination of jurisdiction of complaint filed by David Waggoner against the Ethics Commission for alleged failure to provide the requested records of the Tony Hall investigation.

Member Knee informed Members that he is personally acquainted with Mr. Waggoner who represented his wife last year before the Ethics Commission. However, he said he believes that he can act without prejudice, and asked Task Force members if they feel he need to be recused.

DCA Llorente said that there is the appearance of a conflict of interest, and recommended that he be recused.

Member Knee, in response to Member Craven, said that the matter has been resolved against his wife and that there no longer is a fiscal connection.

Member Craven said that she has no problem with Member Knee sitting to hear the complaint since there is no ongoing matter.

Member Williams said that she has no problem with Member Knee sitting in on the complaint.

David Waggoner said that he doesn't believe that he communicated with Member Knee or his wife regarding this matter, which is a completely different matter.

Chair Comstock disclosed that he did work for Tony Hall and asked to be recused. Motion to recuse. (Knee /Goodman) Without objection.

Hanley Chan disclosed that he knows Tony Hall, but can be fair and impartial.

Member Knee disclosed to John St Croix, after his arrival, that his wife had a matter last year before the Ethics Commission, but feels that he can be fair and impartial.

Mr. St. Croix, in response to Chair Craven said that Member Knee does not need to be recused.

Mr. St. Croix, in response to Member Pilpel said that he is not contesting jurisdiction.

Public Comment: Kimo Crossman suggested that the matter be continued since there are only 7 members seated.

Allen Grossman said if the Sunshine Ordinance does not apply to a Charter Commission, there are a number of other policy bodies and elected officers ho would not be subject to the Ordinance either.

Motion accepting jurisdiction. (Cauthen / Goldman).
Ayes: Craven, Knee, Cauthen, Pilpel, Chan, Goldman, Williams
Absent: Wolfe
Excused: Chu
Recused: Comstock

5. 08004, 08005 & 08007 Public Hearing, complaint filed by Kimo Crossman against the City Attorney's Office for alleged failure to provide communications between the City Attorney and District Attorney, Harrison Sheppard, and Clerk of the Board of Supervisors on Sunshine matters, detailed billing records for this advice, and calendars of City Attorneys who provided advice.

Kimo Crossman asked that his item be continued until more Members arrive. Since there was no motion to continue Chair Craven informed him that the matter would not be continued.

Speakers: Kimo Crossman, Complainant, said that the District Attorney's (DA) communications regarding Sunshine matters have not been provided. He said that according to Government Code §6253 (e) local jurisdictions can adopt local ordinances that match state law if it provides more open government. He said that the Sunshine Ordinance has the power of state law and requires that

attorney-client privileged information be waived. Mr. Crossman asked the Task Force to find a violation of §§67.21 (a) , 67.21 (d), and for improper invocation of an extension of time. He said that DA's records are Sunshine related communications and are subject to disclosure under the Ordinance.

Alexis Thompson, Deputy Press Secretary for Respondent, said the department has responded to Mr. Crossman's request. However, she acknowledged that there was a delay in the response. She also hoped the Task Force was aware that the office takes it duty to provide public records to the public very seriously. She also produced two letters previously sent to Task Force members outlining how the Department felt it would proceed with public records requests made in particular by Mr. Crossman because of volume and frequency.

Kimo Crossman in rebuttal insisted that the CAO has not responded to the outstanding records and wanted the Task Force to add timeliness to his list of alleged violations. He also said it was disappointing for a department that has 200 plus lawyers and staff not to respond to a few record requests.

Public Comment: Dan Boreen said that there is a continuing practice by departments that believe a response to a request is adequate rather than providing the records.

Kimo Crossman, in response to Member Pilpel, said that the records of Harrison Sheppard and the Clerk of the Board have been produced. He said that the CAO has taken the position that all Sunshine related opinions are work product that do not need to be produced and that the DA is not releasing this information for either of the requests.

Member Pilpel asked Ms. Thompson for the January 12, 2006, memo that was mentioned, and asked her to address the issue regarding communications between the CAO and the DA. Ms. Thompson said that per her client's request they did not want to waive attorney-client privilege. She in response to Member Pilpel said the DA is the client and the CAO is the attorney.

Member Craven asked Ms. Thompson for the legal analysis and basis for that position. Ms. Thompson said that she has a letter from the DA requesting none disclosure. She provided a copy of the letter written by Paul Henderson of the DA's office.

DCA Llorente said that §67.21 (i) says that all communications with the City Attorney's Office with regards to the Ordinance are public record. He said that according to the Evidence Code and case law says that it's the client that holds the privilege and the attorney can't waive that privilege. In response to Member Pilpel he said that given the consistency between the CPRA and the Sunshine Ordinance and the fact that the Evidence Code usually deals with laws in court hearings that this body could rely on the CPRA and the Ordinance.

Member Craven said her position is similar. She said that the Sunshine Ordinance obviates the applicability of attorney-client privilege for any

information given by the CAO to any entity they are advising with respect to matters of Sunshine. They can not be covered by the privilege are the lesser protection provided to attorney work product. She said that the DA has some powers granted by State law which makes some of its criminal and investigatory activities confidential, but it is limited to Government Code §25303 and the Cal. Supreme Court found in the Riverra case. It does not apply to the many functions that the DA handles or as required to do under local law like the Sunshine Ordinance, which is locally mandated and controlled. The CAO has not basis in law to refuse to release information with respect to advice or communications regarding the applicability of Sunshine to DA records. She said her motion would be to find a violation for failure to produce communications with respect to the DA regarding Sunshine either under the attorney-client or work product protections.

Alexis Thompson, in response to Chair Comstock, said that there is nothing in the law that allows requestors to receive different treatment. She said the department does not treat Mr. Crossman differently.

Member Pilpel asked Ms. Thompson if it is her office's position that in light of §§67.21 (i) and 67.24 (b)(1)(iii) that the attorney-client information is still protected and are not public records subject to disclosure. Ms. Thompson responded that is correct. Member Pilpel said that this was the first time that he has heard the CAO take issue with the legality or applicability of a particular provision of the Ordinance.

Alexis Thompson, in response to Member Pilpel, said that the DA did not want to waive attorney-client privilege. She read from her March 6, 2008, letter (packet page 101) and cited Business and Professions Code §§6068 & 6068(e)(1), Rules of Professional Conduct, Rule 3-100, and California Gov. Code §6276.04 as justification for the CAO obligation to not to reveal information protected from disclosure.

DCA Llorente said that there is a section in the Good Government Guide (packet pg. 102) regarding Attorney-Client Communication; that the key is the applicability of the Charter and state law as it applies to this matter.

Chair Comstock questioned Ms. Thompson regarding a statement in her e-mail on page 89 of the packet that talks about the legal uncertainty of the validity of §67.24(b)(1)(iii), and asked if the claim is that a section of the Sunshine Ordinance is invalid. Ms. Thompson said that the direction of the DA was to not disclose the communications so the CAO has the legal and ethical obligation to assert the privilege.

Chair Comstock said that this is the first time that he saw the CAO declare war on the Sunshine Ordinance. Ms. Thompson said that she stands by the response.

Motion finding a violation 67.21 (a), 67.21 (i), 67.24 (b)(1)(iii) for failure to produce records regarding communications between the City Attorney's Office and the District Attorney under the attorney-client privilege and/or work product

protection. Under the Sunshine Ordinance all such communications and information are public records not exempt from disclosure. (Craven / Knee).

Pilpel asked to divide the question of attorney-client privilege vs. attorney work product. In response to Member Craven he said that attorney-client privilege is governed by the Ordinance but that attorney work product is governed by the attorney's Rules of Professional Conduct.

Member Craven said that she doesn't believe that there is a basis in law to make such a distinction, or how the vote could be divided.

Chair Comstock said that he doesn't agree with dividing the vote and does not know how it could be done.

DCA Llorente responded that attorney-client privilege is clear; that it's the attorney and client communicating information back and forth for the benefit of the client, which is addressed in CPRA and the Sunshine Ordinance. He said that attorney work product is the internal thoughts, strategies and thinking of the attorney as an attorney would write notes during a deposition and has nothing to do with the Sunshine Ordinance. When the attorney has done his work and is now communicating him information to the client that's more in line with communications, so he's not certain where the work product would come in.

Chair Comstock ruled that the questioned could not be divided. He said that according to Roberts Rules of Order a question can be divided if the question lends itself to division, but it does not in this case.

Motion to appeal the decision of the chair (Pilpel).
Failed for lack of a second.

Motion finding a violation 67.21 (a), 67.21 (i), 67.24 (b)(1)(iii) for failure to produce records regarding communications between the City Attorney's Office and the District Attorney under the attorney-client privilege and/or work product protection. Under the Sunshine Ordinance all such communications and information are public records not exempt from disclosure. (Craven / Knee).
Ayes: Craven, Knee, Cauthen, Comstock, Chan, Goldman, Williams
Noes: Pilpel
Absent: Wolfe
Excused: Chu

Member Pilpel asked that the Order of Determination include more details explaining the basis for the decision reached by the Task Force.

Chair Comstock asked the Administrator to ensure that the minutes accurately reflect various laws and opinions that were discussed.

6. 08006 Public Hearing, complaint filed by Kimo Crossman against the City Attorney's Office (CAO) for alleged failure to provide all materials related to the Buck Delventhal meeting of October 9, 2007, regarding Sunshine Task Force

hearings against Supervisors Peskin and Maxwell, and failure to provide any materials or communications before or after the meeting relating to the matters discussed.

Speakers: Kimo Crossman, Complainant, said the e-mail communications provided were "blacked out" and that they claimed they were attorney work product. He also said that the CAO would not allow him to discuss the redactions with DCA Delventhal. He asked to find for a violation of 67.22 (c).

Alexis Thompson, Deputy Press Secretary for the CAO, said the department responded to Mr. Crossman's request and provided e-mails that were redacted. She said the Ordinance does not say that a specific employee requested must be provided; and that she offered to speak with Mr. Crossman to refer him to someone else in the office.

Kimo Crossman, in rebuttal, said it is everyone's duty to respond to the Ordinance. He warned that ruling against him prevents the public from requesting information from anyone, and that he should be allowed to talk to any employee for up to 15 minutes

Public Comment: Dan Boreen said the intent of the Ordinance is for it to be a vehicle for open access to records and that Sunshine clearly states that communications and discussions are disclosable as it relates to individuals. Allen Grossman said the meeting with DCA Delventhal was between two supervisors who haven't appeared before the Task Force in response to complaints. He said that there was improper invocation of the attorney work product doctrine; that it's not a privilege. He said that one part makes it mandatory in terms of its protection of attorney work product that deals with the thoughts and creative aspects of what the attorney does in a litigation setting. The other part, he said, is conditional and based on what is potentially discoverable in a litigation setting and requires a balancing of the interest of the parties, and is what is in this case. He said that part of the work product doctrine does not apply in public records laws.

Member Pilpel asked Ms. Thompson who the public information person is as per §67.22(a). Ms. Thompson responded that she didn't know, since the responsibility rotates every two weeks amongst the deputies.

Mr. Crossman in response to Member Pilpel said he did not try to call DCA Delventhal directly because he did not have his phone number. He said he submitted his request in writing, but Mr. Delventhal was not made available.

DCA Llorente explained that the information deputy rotates every two weeks. He said that if a deputy can't answer a Sunshine question they are instructed to contact someone in the Government Team who serves as a resource to assist with responding to questions.

Member Cauthen said that she wanted to know what advice was given to Peskin and Maxwell. She said the Ordinance allows individuals to ask for a specific person, but don't think that an individual has the right to speak with the

person requested. She suggested Mr. Crossman call 311 to get the number for anyone in the City.

In response to Member Cauthen, Ms. Thompson said that she didn't know who the custodian of records was at the time of the request.

In response to Member Williams, Ms. Thompson said that her title is Deputy Press Secretary, and that she is part of the Public Information Office. She said she was here as a representative of the department

Member Craven said she does not believe the Ordinance allows a person to request a meeting with anyone they choose. She asked Ms. Thompson to identity the records that were blacked out. Ms. Thompson submitted several documents and said that what was redacted was attorney-client privilege and attorney work product. She also did not know the subject matter. After reviewing the redacted records provided by Ms. Thompson, Member Craven said that the records are not protected under attorney-client privilege should be produced.

Ms. Thompson, in response to Chair Comstock, said that a record of what was redacted was not created.

Member Pilpel said that it would be helpful to have an attorney present to answer some of the questions regarding legal matters.

Member Comstock said that he does not agree that Mr. Crossman has a right to meet with anyone for 15 minutes.

Motion finding a violation of §§67.26, 67.21 (i) and 67.24 (b)(1)(iii) for improperly redacting e-mails. (Comstock / Goldman).
Ayes: Craven, Knee, Cauthen, Comstock, Chan, Goldman, Williams
Noes: Pilpel
Absent: Wolfe
Excused: Chu

Member Craven asked that a copy of the redacted e-mail be provided and added to the Task Force's file.

7. 08011 Public Hearing, complaint filed by David Waggoner against the Ethics Commission for alleged failure to provide the requested records of the Tony Hall investigation.

Member Comstock was previously recused.

Speakers: David Waggoner, Complainant, prepared a proposed Order of Determination that he provided to Members and said that he has not received all of the records requested. He said that the Ethics Commission (EC) is improperly, citing Cal. Gov. Code §6254 (b) as a basis for non-disclosure. John St. Croix, of the Ethics Commission, said that most documents were provided and said that the Charter forbids the Ethics Commission from

providing Mr. Waggoner with its internal notes and memoranda regarding its investigation. He said the documents drafted are subject to pending litigation exemptions. He said that providing the information would give Mr. Waggoner an unfair advantage in a pending litigation matter.
David Waggoner, in rebuttal, said that he is seeking due process rights and not an unfair advantage; including the internal notes and memoranda withheld as evidence against Mr. Hall. He said that §c3.699-13 of the Charter allows the release of records of an investigation after a determination of probable cause, and that the regulations in §13 (b)(1) allows disclosure to the respondent or the respondent's representative prior to a determination of probable cause. He said that §6254 and 6253 (e) need to be considered which allows the Sunshine Ordinance to provide greater access. All has to be interpreted in favor of transparency and open government.

In response to Member Pilpel, Mr. St. Croix said that the only documents withheld are internal notes and memoranda that are germane to the investigation. He referred to the March 18, 2008, letter regarding their non-disclosure of records prior to a finding of probable cause.

Mr. Waggoner, in response to Member Pilpel, said that the documents sought will eventually be disclosed during the discovery process, which would be at least 45 days prior to the hearing but that they want the documents sooner. In response to Member Craven, Mr. Waggoner said that documents could contain slanderous matters against Mr. Hall.

Member Knee said that Prop 59 requires the respondent to prove public benefit from withholding.

Member Craven said the non-disclosure does not comply with normal records that are created by the department. She said that she is concerned about the internal notes and memorandum. She asked Mr. St. Croix if a declaration is discloseable and whether it was created as part of the investigation? Mr. St. Croix declined to answer due to the pending litigation.

Member Craven said that the problem is that this is still an ongoing proceeding. She said that §67.24 (d) which deals with law enforcement investigation records don't seem to apply.

Public Comment: Kimo Crossman said §67.24 (d) is about penal law not administrative law, and doesn't apply. He said that the Ethics Commission is not providing specific reasons why the documents will cause a problem. He said that Cal Gov. Code §6253 (e) which allows local laws to provide greater access to records. He said that there is no harm in producing these documents.

Allen Grossman said that the Ethics Commission must comply with the Ordinance because they can't adopt any provision that limits the Sunshine Ordinance. He said that since the notes and memoranda are ultimately discoverable it is a public record, and that removes any cloak of confidentiality.

Member Wolfe questioned Mr. St. Croix regarding the nature of the declaration of undisclosed parties and asked why a respondent doesn't have the right to face their accuser. In response, Mr. St. Croix said that it is to prevent witness tampering and to allow the investigative staff to follow trails uninterrupted. He said that the discovery period ends 45 days before the hearing on the merits.

Mr. St Croix in response to Member Pilpel said that §C3.699-13 doesn't apply.

Member Williams said she believes that Mr. Waggoner should get what he requested because it's still at an administrative level.

Hanley Chan said that the Ethics Commission is not a law enforcement body and feels that Mr. Waggoner should get the information.

Motion finding no violation. (Pilpel / Goldman).
Ayes: Craven, Pilpel, Goldman
Noes: Knee, Cauthen, Wolfe, Chan, Williams
Excused: Chu
Recused: Comstock

Motion failed for lack of member majority (6) vote.

Member Knee said that the request is not from the general public but is from a party of interest, which caries some weight.

Motion finding a violation of §67.21 a & b, and 67.24 (b)(1)(iii) (Knee / Chan)
Ayes: Knee, Cauthen, Wolfe, Chan, Williams
Noes: Craven, Pilpel, Goldman
Excused: Chu
Recused: Comstock

Motion failed for lack of member majority (6) vote.

No formal action taken.

8. 08013 Determination of jurisdiction of complaint filed by Kimo Crossman against the Sunshine Ordinance Task Force Administrator for alleged incorrect redaction of email addresses.

Frank Darby, SOTF Administrator, informed the Task Force that they held discussion on item #8a without first accepting jurisdiction.

Motion accepting jurisdiction. (Pilpel / Goldman). Without objection.

a. Public Hearing, complaint filed by Kimo Crossman against the Sunshine Ordinance Task Force Administrator for alleged incorrect redaction of email addresses.

Speakers: Kimo Crossman, Complainant, said that email addresses were redacted from emails that he requested, and that the emails were bunched up

in-groups of ten rather than one by one. He said that the Task Force has already ruled in 2004 that emails addresses must be provided. He said that individuals have no expectation of privacy when they contact government, and that CPRA does not specifically identify emails as protected under privacy rights.

Frank Darby, Administrator, said that the office responded to a request for all emails sent and received by the SOTF office from the Sunshine Posse from January 1 through February 6, by providing over 300 e-mails consolidated into several separate emails. He said that only personal information such as e-mail and home addresses, and telephone numbers were redacted, but that no content was redacted. He said that the public does have a right to privacy otherwise their home phone numbers and addresses would have to be disclosed. He also said that CPRA does not specifically identify bank account numbers, mortgage or medical numbers but that doesn't mean that they are subject to disclosure. Mr. Darby also identified several records that were created but not picked up by the Sunshine Posse.

Kimo Crossman, in rebuttal, told members not to get confused by Mr Darby's presentation. He said he did not ask the Administrator to make the paper copies, did not want them, and would not pay for them. The issue, he said, was about emails that were bunched together and redacted in a non-uniformed way.

Public Comment: Allen Grossman said the issue is about whose expectation of privacy, the subjective expectation of the recipient or the sender?

Member Craven said that she did not consider combining several e-mails in one response as a violation.

Member Wolfe cautioned the Administrator about using the word "Redaction" in an e-mail to place information that is be redacted. He said that the practice could be considered as an alteration of the e-mail.

Motion finding a violation of §67.21 (a) of the Sunshine Ordinance for failure to provide e-mail addresses. (Craven / Goldman).
Ayes: Craven, Knee, Cauthen, Comstock, Wolfe, Chan, Goldman, Williams
Noes: Pilpel
Excused: Chu

9. 08015 Determination of jurisdiction of complaint filed by Deniz Bolbol against the San Francisco Zoological Society for alleged failure to provide requested records.

Michael Orosco, Director of Human Resources at the Zoological Society, said he supports jurisdiction and that their office supports open government.

Motion accepting jurisdiction. (Goldman / Pilpel).
Ayes: Craven, Knee, Cauthen, Comstock, Pilpel, Wolfe, Chan, Goldman, Williams
Excused: Chu

a. Public Hearing, complaint filed by Deniz Bolbol against the San Francisco Zoological Society for alleged failure to provide requested records.

Dezin Bolbol, complainant, said she has received all of the records she requested, however the Zoological Society did not respond in a timely manner to her IDR. Michael Orosco, Human Resources Director, said that they take Sunshine matters seriously and concede that they were late in responding to the request. He said that to prevent a reoccurrence all supervisors and managers are receiving mandatory training on Sunshine.

Member Pilpel asked Mr. Orosco to provide a copy of their written Sunshine procedures to the Task Force once they have developed them.

Member Knee suggested to Mr. Orosco that they also develop a redaction policy and to provide a copy to the Task Force.

Public Comment: Kimo Crossman said that every employee is a custodian of records and not just the supervisors and managers.

Motion finding a violation of §67.25 for failure to respond in a timely manner. The Task Force commends the Zoological Society for putting a Sunshine Ordinance training process in place. (Pilpel / Goldman).
Ayes: Craven, Knee, Cauthen, Chu, Comstock, Pilpel, Wolfe, Chan, Goldman, Williams
Excused: Chu

10. Report: Compliance and Amendments Committee: meeting of March 12, 2008.

Member Knee made the report.

11. 07080a The Compliance and Amendments Committee has referred to the Task Force, for further consideration, their recommendation that the Fire Department be found for violation of the Sunshine Ordinance for failure to produce all requested records, and failure to comply with the Order of Determination issued by the full Task Force on November 27, 2007; that referral, based on that finding, to the Board of Supervisors for investigation and potential enforcement be considered.

Speakers: Dan Boreen, Complainant, said that after four Task Force hearings since November 2007, that violations were found for complaints a, b, c, and d against the Fire Department and Orders of Determinations were issued for numerous violations. He requested a published finding of official misconduct by specific individuals for willful failure to comply and a referral to the Ethics Commission for enforcement. Rob Boughn, for Respondent, said that all disclosures were done under the guidance of the City Attorney's Office.

Mr. Boreen, in rebuttal, said that leave status is not a qualified and valid exception for withholding.

Public Comment: None

Member Pilpel asked Mr. Boughn to investigate if the Department had made a written request for a CAO opinion.

Motion to refer Chief Joanne Hayes-White to the Ethics Commission for official conduct and willful failure (Comstock / Knee).
Ayes: Knee, Cauthen, Comstock, Wolfe, Chan, Goldman, Williams
Noes: Pilpel
Excused: Craven, Chu

12. 07080b & 07080c The Compliance and Amendments Committee has referred to the Task Force, for further consideration, their recommendation that the Fire Department be found in violation of the Sunshine Ordinance for failure to provide all necessary information that is releasable from the calendar, and failure to comply with the Order of Determination issued by the full Task Force on November 27, 2007; that referral, based on that finding, to the Board of Supervisors for investigation and potential enforcement be considered.

Items 11 and 12 were heard as one.

13. 07087 The Compliance and Amendments Committee has referred to the Task Force, for further consideration, their recommendation that the Mayor's Office be found in willful failure for failure to comply with the Sunshine Ordinance, and failure to comply with the Order of Determination issued by the full Task Force on January 8, 2008; that referral, based on that finding, to the Ethics Commission for enforcement be considered.

Speakers: Allen Grossman, Complainant, said he has yet to see a representative of the Mayor's Office attend any of the Task Force hearings. He said that the response he received took four months, two hearings and an Order of Determination. He asked for a finding of official misconduct and a violation of various sections of the Ordinance and a referral to the Ethics Commission.

Public Comment: Dan Boreen said that not being present at the hearing shows a person's intent not to be present, which is a willful act.

Motion to refer to the Ethics Commission for official misconduct due to willful failure (Comstock / Goldman).
Ayes: Knee, Cauthen, Comstock, Wolfe, Chan, Goldman, Williams
Noes: Pilpel
Excused: Craven, Chu

14. 07094 The Compliance and Amendments Committee has referred to the Task Force, for further consideration, their recommendation that the City Attorney's Office be found in willful failure to comply with the Sunshine Ordinance, and failure to keep withholding to a minimum and to provide the requested daily calendar in compliance with the Order of Determination issued by the full Task Force on February 26, 2008; that referral, based on that finding, to the Ethics

Commission for enforcement be considered.

Speakers: Kimo Crossman, Complainant, said he asked for City Attorney Dennis Herrera's calendar and was denied the document.

Public Comment: None

Motion to refer Dennis Herrera to the Ethics Commission for official misconduct based on willful failure, and to include the CA's March 11, letter. (Comstock / Knee).
Ayes: Knee, Cauthen, Comstock, Wolfe, Chan, Goldman, Williams
Noes: Pilpel
Excused: Craven, Chu

15. Discussion regarding the Rules Committees proposed amendments to the hearing procedures of the Sunshine Ordinance Task Force.

Member Wolfe made the report. He recommended that the Task Force implement the following new procedures and include them in the By Laws.

- Complainant presents facts and evidence.
- Parties in support present facts and evidence.
- Respondent responds.
- Respondent's supporters respond.
- Task Force in discussion at which time questions may be asked of the complainant and respondent.
- Respondent and complainant summarize and speak to facts and issues that came up during Task Force discussion.
- Task Force is open to motions with respect to the matter, with deliberation following each motion.
- Public comment.
- Task Force votes.
- Public comment at discretion of chair on new motion if vote fails.
- Public comment at discretion of chair if new motion is made.

Public Comment: Kimo Crossman said that the changes were excellent and needed to be made.

Motion to accept the amendments and for the Chair's name to be called last during roll call. (Wolfe / Comstock). Without objection

16. Continued discussion regarding the Task Forces draft 2006/2007 Annual Report.

Chair Comstock requested authority to make changes and to finalize the document.

Public Comment: Kimo Crossman requested that Member Craven's letter on calendar redactions be included in the report. Dan Boreen also wanted the

letter included.

Member Pilpel wanted the report sent to the Mayor, Board of Supervisors, City Attorney, District Attorney and Ethics Commission.

Motion to attach Member Craven's letter as an addendum and forwarded to the Mayor, Board of Supervisors, City Attorney, District Attorney and Ethics Commission (Comstock).
Ayes: By voice vote
Excused: Craven, Cauthen, Chu

Motion for Chair Comstock to finalize report. (Comstock).
Ayes: By voice vote
Excused: Craven, Cauthen, Chu

17. Discussion re: Departments seeking City Attorney's opinion.

Member Wolfe suggested that the Task Force be advised and provided with an opinion if any department requests Sunshine related advice from the City Attorney's Office.

Member Pilpel suggested Chair Comstock write a letter to the City Attorney and make the request, but also to meet and discuss alternate ways if they can not respond.

Public Comment: Kimo Crossman asked the Task Force to itemize this discussion on the Compliance and Amendments Committee's agenda, and suggested that the Ordinance be changed to reflect that all Sunshine advice be put in writing.
Dan Boreen said that the 10-day response time needed to be maintained across the board.

Chair Comstock said he would write a letter to the City Attorney

18. Administrator's Report.

Member Knee, noting that 118 contacts the SOTF office had with members of the public, wanted to know how long it took to resolve an issue.

Chris Rustom, using #08015 Deniz Bolbol v San Francisco Zoological Society as an example, said the issue was resolved in a matter of a few hours.
Member Knee said he would have the same question for Mr. Frank Darby at the next meeting.

Public Comment: None

19. Public comment for items not listed on the agenda. Public comment shall be held at 5:00 p.m., or as soon thereafter as possible.

Public Comment: Mr. Crossman submitted a questionnaire on open

government and asked the Members, who are reapplying for a seat on the Task Force to complete. He said that he will be making recommendations to the Board of Supervisors' Rules Committee, and that responses are due by April 7, 2008.

Allen Grossman said he wants to know the number of outstanding Sunshine referrals before the Ethics Commission and urged the Task Force to instruct the Administrator to update the log.

Administrator Frank Darby, in response to Member Craven's query on the log, said the Members' packet includes a document that shows the status of every complaint and also includes responses, if any, from the Ethics Commission, the District Attorney's Office and the Attorney General's Office.

Member Craven asked the Administrator to update a document that was last used by former Administrator Donna Hall and to include it in next month's package.

20. Announcements, questions, and future agenda items from the Task Force.

Chair Comstock commended Member Pilpel for his in-depth questioning during the Patrick Monett-Shaw v COB complaint hearing.

Public Comment: Dan Boreen thanked the SOTF for their hard work.

Adjournment **The meeting was adjourned at 9:45 p.m.**

This meeting has been audio recorded and is on file in the Office of the Sunshine Ordinance Task Force.