

Date: June 24, 2008

Item No. 1

File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Draft Minutes: Task Force for April 22, 2008**
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Completed by: Frank Darby

Date: June 19, 2008

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

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

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

Sunshine Ordinance Task Force



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**SUNSHINE ORDINANCE TASK FORCE
DRAFT MINUTES**

Tuesday, April 22, 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: 4:04 P.M.
Roll Call Present: Craven, Knee, Cauthen (out at 8:23), Chu, Comstock, Pilpel,
Wolfe, Chan (out at 6:14), Goldman, Williams
Absent: Sheppard

Agenda Changes: Item #18 was heard after item #4a.

Deputy City Attorney: Ernie Llorente
Administrator: Frank Darby

Agenda Changes:

The Administrator informed members that:

- Items 9 and 9a were continued by agreement of both parties.
- Mr. Monette-Shaw requested a continuance of item #5. Without objection. Member Pilpel commented that he wanted updated information on the item that would change the outcome. (6:10)

The Administrator requested that item #15 be continued, because the Department is reviewing its redaction practices and plans to have a policy by next month. Kimo Crossman objected to the continuance. He said that the Clerk of the Board refuses to review the issue of redaction.

Public Comment: Ray Hartz, said that the Department should have already made a decision, and that it's disrespectful for them not to appear. Allen Grossman, said that the Department's policy is not the issue but that the

Clerk of the Board is concerned with getting sued for release of private information.

Motion to continue item #15. (Craven / Comstock)

Ayes: Craven, Knee, Cauthen, Comstock

Noes: Chu, Pilpel, Wolfe, Chan, Goldman, Williams

The motion failed for lack of member majority (6). (17:54 Time Marker/Digital Recording)

Chair Comstock asked the Administrator to provide him with a revised roster of Members telephone numbers. He said that he wanted to check the status of Ex-officio Member Sheppard.

1. Continued approval of minutes of February 26, 2008, meeting.

Public Comment: Kimo Crossman said that he is happy to see detailed minutes. He said that he played last months tape of the Administrator's conversation to the Clerk of the Board regarding the lack of detailed minutes, but she did not commit to more detailed minutes. He said that he is surprised that Mr. Rustom, who should be training, is not present.

Motion to approve the minutes of February 26, 2008 (Pilpel / Goldman).

Ayes: Craven, Knee, Cauthen, Chu, Comstock, Pilpel, Wolfe, Chan, Goldman, Williams (21:27)

2. Approval of minutes of March 25, 2008, meeting.

Public Comment: None

Chair Comstock moved to continue. Without objection. (22:09)

3. Discussion re: Proposed language for the Statement of Incompatible Activities. (SIA)

Vice-Chair Craven asked what the status of the SIA is?

Administrator Darby answered that the Clerk is waiting for feedback from the Task Force, and plans to finalize the language in the next month.

Vice-Chair Craven expressed concern that implementation of the restrictions in §III.B.1 of the SIA will void the waiver that she received from the Ethics Committee, as an attorney, in order to serve on the Task Force.

Member Pilpel expressed concerns about restrictions in §III.A.1 regarding lobbyist, because it might affect some Task Force members. He said that he would like there to be some workshops to discuss the SIA prior to its approval.

Chair Comstock also express concerns about the restrictions in §III.A.1

because it is too broad. He said that if there is a conflict members could recuse themselves.

Public Comment: Kimo Crossman, said that the Task Force is a separate body from the City and had the option to use discretion. He suggests that the Task Force keep its distance from the SIA.

Allen Grossman agreed with Mr. Crossman saying that provisions of the charter do not govern the Task Force.

Ray Hartz, said that he is not certain what is being reviewed and suggested that the SIA have some code key to describe the strikethrough and the underlines, which would make it easier from the public to review and comment.

Member Knee said that he would like for Article 1 §3 of the California Constitution included as a bullet point in the cited authorities on page 1. He also wants to include the words "but not limited to" inserted in the last paragraph in §II before San Francisco Sunshine Ordinance and.

Chair Comstock asked the Administrator what is the process for submitting changes. The Administrator responded that the Task Force is to review the draft and submit any suggested changes to the COB, who plans to finalize the SIA in early May 2008.

Member Pilpel suggested that the chair write a letter to the Clerk of the Board (COB) and a copy to the Mable Eng of the Ethics Commission (EC) expressing the Task Force's concerns about the registered lobbyist provision, the restrictions mentioned on page 6 regarding giving assistance or advice and to suggest the changes that were voiced. Also that the Task Force request a training/workshop, meeting, presentation, etc. on the implications of the SIA on the Task Force

Chair Comstock questioned the appropriateness of the term "decision-maker" mentioned in §III.C of the SIA. Member Craven said that the term tries to denote whom to apply to get a waiver.

Member Craven suggested that the letter be written with an offer to meet to express concerns.

Chair Comstock said that he will write a letter to the COB and EC. Without objection. (42:19)

4. Report from the Complaint Committee meeting of March 11, 2008.
 - a. Complaint Committee's revised Mission and Work Plan.

Member Cauthen made the report.

Member Pilpel suggested:

Item 2 Make a recommendation, rather than a determination; item 3: strike first

sentence and add language to ascertain that all parties had been invited and that all relevant documents are in the file. item 4: rather than "make" the committee will "prepare" a recommended Order of Determination, he asked that the matter be agendized for action by the Task Force. Member Wolfe voiced concerns about the Supervisor of Records coming into play at the Complaint Committee level.

Member Cauthen explained that a complainant may, when jurisdiction is not contested, rather than a hearing, request that the SOR make a determination or ask the Complaint Committee to make an Order of Determination.

Member Craven questions re: paragraph 4. What is the purpose of having an OD when the respondent has not had the opportunity to present their evidence?

DCA Llorente: The parties at the CC there is an agreement and what OD should be made it would still come to the Task Force, but the bodies don't wish to come before the Task Force. He explained the historical background of the Complaint Committee and the provision in question.

Member Craven said that complainants could submit their complaint and do not have to attend hearings if they wish. They are not employees and that is the difference.

Members Craven, Wolfe and Pilpel recommending striking #4 from the Work Plan.

Member Pilpel requested that the item be continued to the next meeting for action and that the mission and work plan for other committees be included in the next packet to determine that there the committees harmonize.

Chair Comstock asked the Complaint Committee to meet and come up with the text that is needed for this section. Without objection

Public Comment: Kimo Crossman said, that Member Pilpel should have a meeting of the Education and Outreach Committee, which hadn't meet for a year, if he is interested in procedure. (57:21)

5. 07092 Hearing to consider the appeal filed by Patrick Monette-Shaw of the February 26, 2008, Order of Determination issued by the Task Force against the Board of Supervisors and Human Resources Department.

Continued. Without objection.

6. 08017 Determination of jurisdiction of complaint filed by Kimo Crossman against the Sunshine Ordinance Task Force Administrator for alleged violation of the Sunshine Ordinance for providing "bulk" e-mails rather than individual e-mails as requested.

Speakers: None

Motion accepting jurisdiction. (Chu / Pilpel). Without objection. (79:03)

- a. Public Hearing, complaint filed by Kimo Crossman against the Sunshine Ordinance Task Force Administrator for alleged violation of the Sunshine Ordinance for providing "bulk" e-mails rather than individual e-mails as requested.

Speakers: Kimo Crossman, Complainant, said that e-mails he received were sent in bulk, with all of the attachments at the bottom of the e-mail. He said that the Administrator refused to consider other methods of providing the records. Frank Darby, Respondent, said the Department provided the records that were requested and that the beginning of each new e-mail is clearly identified and the attachments are contained within. He said that the issue is that Mr. Crossman is not pleased with how it was sent.

Mr. Crossman, in rebuttal, said that all of the attachments appear at the end of the e-mails and it is not clear which of the e-mails they belong to.

Member Wolfe stated that an e-mail is an individual record, it does not come as a string. It contains metadata, or information that may or may not be seen. Depending on the e-mail reader of the user. What the Administrator has done, rather than giving the records to the complainant, in the original format as they were requested, is that they have been scanned into a pdf. This presents the requester with a much different record, and in this case, some difficulties because the record is a combination of multiple records. We have already determined that that is not allowed. We have determined that a record must be disclosed in the format in which it is requested, if it exists.

E-mails are located in folders or in a database. In the case of the City, it is a database. A database may contain almost unlimited records. They are retrievable, there are backups and backups for backups. If a hard drive crashes, another kicks in. E-mail readers (clients) do not change the information.

The Task Force should be creating its own policy with regard to e-mails, not depending on the policies of the Board of Supervisors.

Member Craven asked member Wolfe if it is fairly simple to download e-mail files in .pst format to a disc? Member Wolfe responded that a .pst file is a way to archive Microsoft Outlook files. While you can archive .pst files, the City uses Lotus Notes, and it does not have, to his knowledge, such a capacity. He said that he is very concerned that the City continues to use such a non-transparent system and the issues of control that it signifies. She asked if there is a way that is easily done, not burdensome in which Mr. Darby could comply. In this issue the requester said "e-mails," and that has been done. Tomorrow the requester could make a request for the e-mails in their original electronic format, and Mr. Darby would have to do that.

Member Cauthen 67.21(l) says that electronic public information shall be made available in any form that is easily generated. Mr. Darby asserts that providing 300 e-mails is not easily generated. When someone asks for, not a single document, but a string of documents, then the question of reasonableness

comes into play.

Chair Comstock asked Mr. Darby if they could make a pdf of each e-mail. Mr. Darby said that would be difficult because of attachments, and with 300 e-mails that would have to be converted to a different format and each of their attachments as well, there would be a considerable investment of time involved.

Member Craven stated that she would vote for a violation, but that if Mr. Crossman comes back with a request for "original electronic format," she feels that Mr. Darby would have to comply. So the question Mr. Darby needs to find out from DTIS is, if there is a way to archive e-mails and attachments from Lotus Notes?

Chair Comstock said that he felt this was quibbling about words, and that a requester does not have to make a request in the exact technical language in order to get information they need. I would

Motion finding no violation. (Chan / Cauthen). The chair took the role call.
Ayes: Craven, Knee, Cauthen, Chu, Pilpel, Chan, Goldman
Noes: Comstock, Wolfe, Williams (125:00)

7. 08018 Determination of jurisdiction of complaint filed by Kimo Crossman against the Sunshine Ordinance Task Force Administrator for alleged violation of the Sunshine Ordinance for failure to scan, e-mail, fax and/or post requested records on the SOTF website.

Speakers: None

Motion accepting jurisdiction. (Goldman / Wolfe). Without objection.(126:06)

- a. Public Hearing, complaint filed by Kimo Crossman against the Sunshine Ordinance Task Force Administrator for alleged violation of the Sunshine Ordinance for failure to scan, e-mail, fax and/or post requested records on the SOTF website.

Speakers: Kimo Crossman, Complainant, said that the Department is in violation of § 67.29-2 for not putting as much information as possible on the website. §67.21-1 regarding the use and purchasing of computers advocates for putting records on the internet where they are easily accessible and that they should be provided in electronic format. He said that the Administrator refused to provide the paper documents in electronic format. He said that the Clerk of the Board has machines that scan paper documents to .pdf electronic format, make paper copies or e-mail, merely by pushing different buttons. He said that the Ordinance requires that requests be filled using the least expensive methods, and by requiring that he pay 10 cents per page for documents, rather than sending the files as .pdf or posting them to the website, the Task Force is in violation. Frank Darby, Respondent, played an audio recording of the Board of Supervisors December 5, 2006, meeting containing policy direction to the Clerk of the Board. In it, Supervisor Elsbernd

clarifies that the department's policy is to provide records in the format in which they exist and is not required to create formats that don't exist. The paper documents were available for him on a CD, and we have complied.

Mr. Crossman, in rebuttal, said that Supervisor Elsbernd was wrong and that not scanning documents is discriminatory against the poor, against the disabled, for whom travel presents an obstacle as well as to those who have to work for a living and can't take off from their job to retrieve records. He said that the language of 67.29 does not require that electronic documents were required to be electronic originally. He said the Supervisor Elsbernd's summary was inaccurate with regard to state law, which says that the records must be provided in the requested format. He requested them in electronic format, the Clerk has the ability to provide them without any additional burden, and that is the format he wanted. Using computers to restrict access to information should not be tolerated.

Public Comment: Ray Hartz, said that the complainant should not be asked why or what a records is to be used for.

Allen Grossman, He said that providing 300 e-mails is not burdensome, that staff is paid to do it. He cited that a court held that a 30,000 page document was not unreasonable.

Dee said that she believes that Mr. Darby will comply with the Task Force if instructed to scan the records and make them available. She said that in the long run, it would be easier for Mr. Darby to comply with the scanning of documents, that other cities are doing transparency this way.

Member Craven said that 67.21-1 (a) is the only section of the Ordinance that applies. 67.21 (L) and CPRA 6253.9 deal only with electronic documents. She said that as a matter of common sense and feasibility the Clerk's Office should reduce the cost of Sunshine. She said scanning to pdf is exactly the same amount of time, and it saves money for the cost of complying. They should be using the scanner rather than paper copies. She suggested there may be some reticence to fulfill the requests of frequent requesters and a certain inflexibility on the part of the Administrator or the Clerk, but there was no evidence that this request was burdensome in any way.

Member Wolfe asked the Administrator if he has ever scanned a document and sent it via e-mail in response to a request. Mr. Darby said, "no."

Member Pilpel said that § 67.21 (L) and CPRA 6253.9 (c) don't apply. He said that under § 67.28 if the process by which a document is copied or scanned using the same equipment and process, and copied to the order of the requestor that he's not certain that the City can't charge .10 per page for documents that are scanned and made available.

Member Chu asked Member Craven if she is suggesting that there is a violation. Member Craven responded that it is a judgment call and not clearly required, but if it does reduce the cost and increase the ease of production it is in the spirit of the Sunshine Ordinance. She said it is the policy of the SOTF is, where practicable, documents should be scanned and sent electronically if requested by the requestor as a method of complying.

Member Cauthen said that she believes that it is a judgment call; that the request needs to be viewed from the point of reasonableness. She applauds the Sunshine Posse for trying to forge new ground on the utilization of new technology in Sunshine questions, but she also has some sympathy for the respondent as well.

Motion finding a violation of section 67.21-1 (a). (Wolfe / Knee).

DCA Llorente said that §67.21-1 (a) of the Ordinance deals with policy, as to a goal.

Member Pilpel said that a violation couldn't be found on §67.21-1 (a) unless it's an actual purchase, policy or practice change by a department. He said that there is no instant application. He said that the complainant is trying to escape the costs that are applicable to other requestors. He said decreasing the cost to the public, while increasing the burden on the City is a bad deal for the City.

Member Wolfe said that the section also deals with the use of computer systems.

Member Cauthen addressed the "grumpy" factor on the part of departments.

Chair Comstock asked the Administrator as a personal favor to consider changing his personal policy by scanning records and sending via e-mail to requestors where practicable. The Administrator said that he would consider scanning records in response to a request provided that doing so would not violate Department policy. He said this section was designed to help the public and to increase public participation, He said he could not disregard the policies of the Clerk of the Board. There is a policy regarding faxing requested documents, and there may soon be a policy about scanning. He said he needs some guidance with regard to what is practical regarding such a policy.

Chair Comstock said that he could only speak for himself, but if it is requested, it should be scanned to e-mail, and unless there is a specific, demonstrable reason why it cannot be scanned, He respects the difficult position the Administrator is in, having to answer to both the commission and the Clerk, but he would be supporting the finding of violation.

Member Wolfe said there should be a consistent policy to scan documents unless they are requested in paper.

Member Chu suggested that a more positive rather than a negative approach be taken.

Chair Comstock said that after a violation is found, it will go to the Compliance and Amendments Committee, at which time, the body can review the policy of the Clerk and assist in its development.

Member Pilpel said he didn't think we should be formulating policy in the

context of a complaint, but it should occur in a specifically agendized item.

Member Cauthen suggested a friendly amendment commending the Clerk's Office for its efforts and urging continued use of technology to reduce the cost of request.

Motion finding a violation of section 67.21-1 (a). The Task Force commends the COB on its efforts and urge the department to continue moving in the direction of broader use of technology to reduce the cost and time of responding to document requests. (Wolfe / Knee). (Roll call by Chair Comstock)

Ayes: Craven, Knee, Cauthen, Comstock, Wolfe, Williams

Noes: Chu, Pilpel, Goldman

Excused: Chan (178:38)

8. 08019 Determination of jurisdiction of complaint filed by Kimo Crossman against the Clerk of the Board of Supervisors, Sunshine Ordinance Task Force Administrator and Department of Telecommunications and Information Services for alleged violation of the Sunshine Ordinance for failure to provide deleted e-mails.

Speakers: None

Motion accepting jurisdiction. (Goldman / Wolfe).

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

Excused: Chan

- a. Public Hearing, complaint filed by Kimo Crossman against the Clerk of the Board of Supervisors, Sunshine Ordinance Task Force Administrator and Department of Telecommunications and Information Services (DTIS) for alleged violation of the Sunshine Ordinance for failure to provide deleted e-mails.

Speakers: Kimo Crossman, Complainant, said that deleting e-mail is not legal under CPRA. He said that if e-mails are deleted before end-of-day they are nor retrievable, because back-up occurs at end of the day. He said that e-mails should be retained for two years. He said that there is a lawsuit in North Carolina against this practice. A staff person should not be empowered to decide what is a retainable e-mail. Frank Darby, SOTF Administrator, said that the Department has provided all records in its position, and does not have access to deleted e-mail messages, but submitted a request to DTIS. Ron Vinson, DTIS, said that the Department never received a request to recover the e-mail. He said that the department could not recover deleted e-mail but could recover the raw data. They can provide the entire file that may contain both deleted and existing e-mails. Most requests come from a subpoena or from a judge.

Mr. Crossman, in rebuttal, said that the purpose of a back up is to restore deleted e-mail. He said that there was no effort made to respond to the request and that the e-mails should not have been deleted. He said that he

would except raw data. He said there was nor response from DTIS. He said the City's policy to delete e-mails is illegal.

Public Comment: Ray Hartz said that he doesn't believe that City has supported its claim and that Mr. Crossman is entitled to the e-mails. Allen Grossman, said he finds it amazing that the City has a system to backup but no ability to retrieve the e-mails. He says it strain's credibility that they don't know where to look.

Dee Modglin, said that when employee's leave their offices e-mails are routinely destroyed. She urged creation of a statement similar to the prior complaint to help create standards of disclosure.

Member Wolfe said that there is plenty of free software to retrieve e-mail and that the question is whether the e-mails were deleted or shredded. He said that restoring raw format is difficult, but should be done; that the time frame for responding can take a long time. He noted that this is the first time DTIS has come forward with the information that they do have back-ups available. He said that they should provide the e-mails because it was requested.

Member Craven said that the problem is comparing each days e-mail database; that it's and onerous/arduous task.

Mr Vinson, responding to Chair Comstock's question, said that they do not, and cannot provide deleted e-mails. They can provide the entire file, as they do to a request via subpoena etc.

Member Pilpel referred to CPRA 6252 (e). He asked Mr. Darby if the deleted e-mails were not "retained" by the Department, were they, in fact, public documents? Mr. Darby said they were not retained, they do not exist in his database and therefore they were not public records. Member Craven responded that she doesn't believe this section is appropriately used and that Mr. Darby's interpretation is incorrect. She said that under Mr. Darby's policy, a department could delete anything and then claim it was not a public record, which is not what the law allows. "Public records includes any writing containing information relating to the conduct of the public's business prepared, owned, used, OR retained by ..." She said that "retained" has been legally interpreted to mean that it was in possession of the department.

Member Knee said that he believes §67.29-7 (a) applies in that it says they "shall be preserved" and that destruction of e-mails is illegal. Member Craven responded that the section has to do with retention policy or practice, and that she believes business e-mails should be retained for two years, either in electronic or printed form.

Vice-Chair Craven said that the question for her is whether documents that should have been retained under the department's retention policy were, in fact, preserved for the public. She said this is unlike the Ente-Peskin matter. She said in that case, it is incumbent on Supervisor Peskin, as the custodian of the record, to go to DTIS and retrieve the e-mails in question. His e-mails could have been restored, and a word search for "parrot" could have accomplished

the task. This case is much different. This is a request for 31 days of e-mails and would require an onerous burden on Mr. Darby to compare the raw data with the existing records in order to identify deleted e-mails. She also believes that wholesale production of the files would not be allowed, as there could be legally exempt information that could be disclosed. She said she has a fundamental difficulty with the retention policy that allows too much discretion on the part of employees to delete

DCA Llorente said that since Mr. Darby is not a department head that §67.29-7 may not be relevant.

Vice-Chair Craven said she disagrees, that the department head is responsible to make sure that records are preserved, which makes it Mr. Darby's job as he serves the department head.

Motion finding no violation. (Pilpel / Goldman).

Ayes: Craven, Cauthen, Chu, Comstock, Pilpel, Goldman

Noes: Knee, Wolfe, Williams

Excused: Chan. Role called by the Chair. 245:11

9. 08020 Determination of jurisdiction of complaint filed by Peter Witt against the Taxi Commission for alleged interrupting of public speaker, depriving public speaker equal speaking time, removal of public speaker from the meeting, deleting public testimony from the minutes, failure to allow time to set up, and discussing a non agendized matter.

Continued prior to the meeting.

- a. Public Hearing, complaint filed by Peter Witt against the Taxi Commission for alleged interrupting of public speaker, depriving public speaker equal speaking time, removal of public speaker from the meeting, deleting public testimony from the minutes, failure to allow time to set up, and discussing an non agendized matter.

Continued prior to the meeting.

10. Report: Compliance and Amendments Committee: meeting of April 9, 2008.

Member Knee made the report.

11. 07088 The Compliance and Amendments Committee (CAC) has referred to the Task Force, for further consideration, their recommendation that based on subsequent information that has been provided as required by the Order of Determination (OD) of January 8, 2008, the Assessor's Office (AO) has impermissibly redacted and/or withheld information from the Assessor's calendar, specifically the date and time of the meeting with the City Attorney's Office (CAO) and redacting and/or replacing City employees names with job titles. The CAC recommends that there be a hearing and a finding of a violation of §67.21 (b), and that at the discretion or decision of the full Task Force that the issue be returned for further proceedings to the CAC or if it

appears from the department that their position has not changed that it be referred to the appropriate agency for enforcement.

Vice-Chair Craven summarized the matter. She said that previously Ms. Nguyen stated that she did not know what had been redacted. Subsequently we learned from her that there were three categories that were redacted.

1. Personal and private information
2. Date and time of meetings with the City Attorney
3. Names of employees with whom the Assessor met.

The latter two were not appropriately redacted, and are violations of the ordinance. Subsequent to our findings at the CAC new information is in the packet.

Speakers: Kimo Crossman, Complainant, said that willful failure should be found since there is no departmental representative present. He said that purely personal info is not redactable; that he didn't find out about the redactions until additional questions were asked. Mr. Crossman also said that the department refused to provide future calendars

Vice-Chair Craven said that since the Assessor's Office (AO) has already agreed to provide information on a rolling basis, to release the names of employees and the date and time of meetings with the CAO that there is no need to refer the matter or reiterate an Order of Determination that is already there.

Motion to take no further action. TA letter be to be sent through the Chair that clarifies the position of the Task Force that although §67.29-5 does not require that the names of employees be recorded; to the extent that they are recorded on Mr. Ting's calendar they must be produced, pursuant to §67.21. The Task Force appreciates the AO for making that change. (Craven / Cauthen)

DCA Llorente asked if §67.21 could be included in the language of the motion since it generally deals with public records, which must be disclosed.

Member Pilpel moved to divide the question. He said that he does not agree that staff names are required to be included in the calendar under §67.29-5 and/or that the names must be disclosed if included in the calendar. (Pilpel).

Vice-Chair Craven suggested that the letter indicate what the vote was by the Task Force.

DCA Llorente said that there must be a second for action to be taken on a motion.

Motion failed for lack of a second.

Member Pilpel said that he would like his objection reflected in the letter.

Member Knee said that Member Pilpel's objection will be reflected in the minutes.

Member Pilpel responded that he preferred that his objection be reflected in the letter.

Motion to take no further action. That a letter be sent through the Chair that clarifies the position of the Task Force that although §67.29-5 does not require that the names of employees be recorded, to the extent that they are recorded on Mr. Tings calendar they must be produced, pursuant to §67.21. The Task Force appreciates the AO for making that change. (Craven / Cauthen)

Ayes: Craven, Knee, Cauthen, Chu, Comstock, Wolfe, Goldman, Williams

Noes: Pilpel

Excused: Chan

12. 07096 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 to comply with the Sunshine Ordinance for failure to keep withholding to a minimum, failure to provide the requested daily calendar, and failure to appear 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 and the Board of Supervisors for enforcement be considered.

Vice-Chair Craven noted that there has been no response from the Mayor's Office.

Speakers: Kimo Crossman, Complainant, said that the Mayor's office has not responded or provided the future calendars. He urged the Task Force to refer to the matter to the Board of Supervisors, Ethics Commission and Attorney General.

Motion to refer to the Board of Supervisors and Ethics Commission for enforcement for official misconduct due to willful failure (Chu / Knee).

Member Pilpel asked if the matter related to future calendars. Mr. Crossman said yes. Member Pilpel said that willful failure is not merely failing to perform a specific task, but failure with intent to not comply with the law. He said that he don't see that intent, and that since there was no response from the Mayor's Office that a finding of intent could not be determined.

Motion to refer to the Board of Supervisors and Ethics Commission for enforcement for official misconduct due to willful failure (Chu / Knee).

Ayes: Craven, Knee, Cauthen, Chu, Comstock, Wolfe, Goldman, Williams

Noes: Pilpel

Excused: Chan 262:30

13. 08004,
08005
&
08007 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, for failure to produce records regarding communications between the City Attorney's Office (CAO) and the District Attorney (DA) in compliance with the Order of

Determination issued by the full Task Force on March 25, 2008; that referral, based on that finding, to the Ethics Commission for enforcement be considered.

Vice-Chair Craven informed members that the CAO did not attend the CAC hearing, but provided the letter; that there is no new information.

Speakers: Kimo Crossman, Complainant, urged a finding of willful failure and referral to the Board of Supervisors, Ethics Commission and Attorney General.

Public Comment: Ray Hartz said that City departments should not be rewarded for not appearing; that not showing up is a violation.

Motion to refer to the Ethics Commission for enforcement for official misconduct due to willful failure (Chu / Cauthen).

Member Wolfe suggested that the Task Force define enforcement for the Ethics Commission.

Vice-Chair Craven asked that the OD be amended to correct technical errors.

Member Pilpel suggested that due to the new format future OD's be adopted by the Task Force prior to submittal. He asked that the Rules Committee agendaize the matter regard the OD process. He said that this matter does not rise to the level of willful failure and does not warrant a referral.

Vice-Chair Craven said that standard for willful failure is high and does not apply in all situations; that where the Sunshine Ordinance is unclear or unsettled areas of the law may be grounds for not finding willful failure. However, where the Ordinance is specific and clear and case law makes it clear that there is a violation then you have a case for willful failure.

Motion to refer to the Ethics Commission for enforcement for official misconduct due to willful failure (Chu / Cauthen).

Ayes: Craven, Knee, Cauthen, Chu, Comstock, Wolfe, Goldman, Williams

Noes: Pilpel

Excused: Chan 277:17

14. 08006 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, for improperly redacting [non] attorney-client privilege and work-product from the e-mails produced in compliance with the Order of Determination issued by the full Task Force on March 25, 2008; that referral, based on that finding, to the Ethics Commission for enforcement be considered.

Vice-Chair Craven informed members that no additional information was provided at the CAC and the matter is similar to the prior complaint.

Speakers: Kimo Crossman, Complainant, said that §67.22 (b) allows an

individual to ask questions of an individual. He asked the Task Force to strike the entire last sentence in paragraph 1 under Findings of Fact and Conclusions of Law in the Order of Determination. He said that he will be filing a new complaint and urged a referral.

Motion to refer to the Ethics Commission for enforcement for official misconduct due to willful failure (Chu / Goldman).

Ayes: Craven, Knee, Chu, Wolfe, Goldman, Williams

Noes: Pilpel

Absent: Comstock, Cauthen

Excused: Chan 280:32

15. 08013 The Compliance and Amendments Committee has referred to the Task Force, for further consideration, their recommendation that the Sunshine Ordinance Task Force Administrator be found in willful failure to comply with the Sunshine Ordinance, and failure to keep withholding to a minimum and to provide the requested unredacted personal e-mail addresses in compliance with the Order of Determination (OD) issued by the full Task Force on March 25, 2008; that referral, based on that finding, to the Board of Supervisors for enforcement be considered.

Vice-Chair Craven said that at the CAC there was not any additional information provided. That the Mr. Darby felt that he complied with the Ordinance.

Speakers: Kimo Crossman, Complainant, urged the Task Force to refer the matter to the Board of Supervisors and the Ethics Commission. He said that the Clerk has said that they are revising their policies for two years. Frank Darby, Respondent, said that the Department's position has not changed and will not provide the personal e-mail addresses that were redacted from the e-mails to third parties.

Member Williams questioned the purpose for the continued referrals.

Vice-Chair Craven said that the reason for the referral to the Board of Supervisor (BOS) is because it deals with the Clerk of the Board's (COB) policy. She said that she feels that his matter should be agendaized for next month's meeting to allow the COB to review their policy, because she doesn't believe that the BOS will take action on it while there is policy discussions on it. However, she does believe that the OD is correct.

Member Williams asked Mr. Darby if he would take back to the COB the discussions of the Task Force on this matter, and bring a concrete response. Mr. Darby said yes, but he could not guarantee that the Task Force would or would not agree with the decision. He said that he would inform the Clerk that the Task Force requests her presence.

Member Williams and Vice-Chair Craven asked the Chair to make a personal request to the COB to appear.

Member Wolfe asked what the status of the policy is. Mr. Darby responded that the matters are being discussed and research being conducted. He said that regarding this matter the COB hopes to have an answer to the Task Force for the May 27, meeting.

Mr. Darby informed the Task Force members that the COB is committed to Sunshine and Open Government, and is looking at ways to make more information available.

Member Pilpel asked if there is consistency in the COB regarding redaction of "C" pages. Mr. Darby responded that there is no consistency, which is why the department is reviewing its policy.

Motion to continue to the May 27, 2008, meeting. (Knee / Williams).

Ayes: Craven, Knee, Chu, Comstock, Williams

Noes: Pilpel, Wolfe, Goldman

Absent: Cauthen

Excused: Chan 293:43

The role was called by the Chair.

Member Wolfe said that if the matter is continued and there is no satisfactory decision presented by the COB that it should automatically be referred to the BOS.

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

Chair Comstock said that he wrote a letter to the City Attorney, and read from the draft letter.

Member Pilpel asked that a sentence be added to say, "We look forward to your written response." Without objection.

Speakers: None

Action to be taken without objection.

17. Administrator's Report.

The Administrator made the report.

Member Pilpel asked that amendments to the By-Laws be agenzized for action next months meeting. Without objection.

Member Wolfe asked that the By-Laws be provided in redline format. He said that the draft in the report omits a summation period.

Member Pilpel asked that the finalized Annual Report be included in the Administrator's report for next month. Without objection.

Member Pilpel noted that the communications received log is not included. Vice-Chair Craven suggested that it be included with next month's report.

Public Comment: Kimo Crossman asked that the By-Laws be agendized earlier in the meeting. He said that the Task Force has not looked at the separation of duties between Mr. Rustom and Mr. Darby; that the COB informed him that it would take a year to train Mr. Rustom and a year to revise the retention schedule. He said that the Task Force should not give the COB more time.

Ray Hartz said the changes to the By-Laws are inappropriate to make. He said that the Task Force should allow parties to correct misstatements prior to a vote.

Chair Comstock asked the Administrator about the status of appointments by the BOS Rules Committee. The Administrator informed them that the BOS Rules Committee will be considering appointments to the Task Force on Thursday, May 1, 2008, at 10:00 am in room 263.

18. 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. (57:22)

Public Comment: Kimo Crossman said the Clerk of the Board informed him that Mr. Rustom will be in training for a year, which he feels is too long. He said that Mr. Rustom might not be qualified for the position. He alleged that the Administrator is earning only \$6k less than the COB, and it needed to be corrected. He said that the COB refused to put a hold on the destruction of e-mail and will take a year to change its retention policy.

Ray Hartz said that the Good Government Guide indicates that e-mails can be deleted if retained in paper and that if they are not retained and cannot be retrieved, they must be printed out in paper and filed in an accessible place. He said that anyone in IT should be able to get e-mails to individuals.

Allen Grossman said that after filing his complaint against the Mayor last year that he is still waiting for the Task Force's approved referral to be sent to the Ethics Commission. He said that there is no reason to wait until the minutes are approved before sending the referral to the Ethics Commission. He urged sending the referral.

Jeff Ente said that the Ethics Commission wouldn't discuss the status of his complaint with him that was referred by the Task Force because they said that it is the Task Force's complaint. He asked the Task Force to inquire about the status of the referral.

Member Williams said that although the Education Outreach and Training committee hasn't met, the Members have been working diligently in the community.

Vice-Chair Craven asked the Administrator to check each month on the status of each referral to the various entities and to include the status in future Administrator's reports.

Member Wolfe asked if the Ethics Commission had informed the Task Force

that referrals are no longer the property of the Task Force once it's in their jurisdiction. Vice-Chair Craven responded yes, but that the Task Force can check on the status.

Member Pilpel urged the creation of a referral log. He asked that a letter be sent to the Ethics Commission asking them to put in writing whether or not they have separate regulations or procedures for processing referrals from the Task Force pursuant to §67.34, which are different from their regulations for handling complaints; or whether or not they handle all complaints in the same manner. If so, whether the Task Force is considered the complainant or the underlying person is considered the complainant for purpose of those regulations.

Member Pilpel agreed to draft the letter and to send it to Chair Comstock.

Member Wolfe said that his understanding from the Ethics Commission was that they had no enforcement procedures.

Vice-Chair Craven asked if the Task Force's policy was that referrals are not sent out until the underlying minutes have been approved, as indicated by Mr. Grossman.

Chair Comstock said that sometimes the minutes are fine as they are and sometimes they need changes, but doesn't feel that the status of minutes has anything to do with the referrals.

Administrator Darby responded that his understanding was that only approved minutes were to be sent with a referral to ensure that the entity was receiving appropriate minutes.

DCA Llorente said that the new Order of Determination format was sufficient to obviate the need for detailed minutes inasmuch as they have the information that was previously found only in the minutes.

Chair Comstock instructed the Administrator to send the referral with tentative/unapproved minutes, and afterwards resend the minutes once they are approved. (76:31)

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

Member Wolfe informed members that he did not reapply for his seat, because he said that referrals to the Attorney General and Ethics Commission don't seem to go anywhere. He feels his energy can be better used elsewhere. He said that he will attend the May 1, BOS Rules Committee meeting to convey his experience and will continue to serve until his seat is filled.

Member Knee informed Members that the author of AB1978 has withdrawn the bill restricting the public from getting certain kinds of electronic data.

Chair Comstock asked to agendaize, "Discussion of the document retention policy for the Board of Supervisors" for the purpose of developing

recommendations.

Member Piipel asked that the matter be agendaized first with the CAC. Without objection.

Member Knee asked the Administrator to agendaize the discussion for the next CAC meeting.

Public Comment: Dee Modglin asked the Task Force to agendaize a discussion to add online the SF Subdivision Code that is being amended by the Mayor's Office of Housing, for greater access.

Ray Hartz urged the Task Force to agendaize a discussion re: the policy of the Administrator vs. the Clerk's Office.

Kimo Crossman urged the Task Force to agendaize a discussion requiring the Administrator to put all SOTF records on the Internet.

Vice-Chair Craven urged referral to the Rules Committee a discussion of policies that the Task Force wants implemented by the Administrator for placing on the SOTF website.

Adjournment

The meeting was adjourned at 9:23 p.m.

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