

Date: June 24, 2008

Item No. 10
File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Administrators Report for June 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**



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

MEMORANDUM

TO: Sunshine Ordinance Task Force

DATE: June 19, 2008

SUBJECT: Administrator's Report for June 2008

1. Requests from community persons:
 - From May 21, 2008 through June 19, 2008, the Task Force's office responded to approximately 192 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. Referral Log
4. Communications Received Log (May 21 to June 19)
5. Ethics Commission status reports
6. Referral letter to Board of Supervisors regarding 08013 Kimo Crossman v SOTF Administrator
7. Supervisor of Records responses to Laura Carroll
8. DCA Paula Jesson's letter regarding annual report
9. DCA Ernie Llorente 's letter regarding Brown Act revisions
10. Orders of Determination
 - #08020 Peter Witt v Taxi Commission
 - #08021 Kimo Crossman v City Attorney's Office

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1/7/2008	Hank Wilson (08002)	Public Health - HPPC	Complaint Committee 2/12/08 (Withdrawn: 2/6/08)
1/10/2008	Christian Holmer (08003)	Mayor's Office	Complaint Committee 2/12/08; Task Force 2/26/08 (Withdrawn: 2/22/08)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: Referred to Ethics (sent:5/13/08)
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: Referred to Ethics (sent:5/13/08)
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: Referred to Ethics (sent:5/13/08)
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: Referred to Ethics (sent:5/13/08)
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 3/1/08 (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 3/1/08; Task Force 3/25/08 (No formal action taken)

Complaints 2008

3/2/2008	Kimo Crossman (08012)	Clerk of th Board, SOTF Administrator	Task Force 3/25/08 (Withdrawn 3/14/08)
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; 5/27/08 Referred to BOS (sent 06/13/08)
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)	Clerk of the Board, SOTF Administrator	Task Force 4/22/08 (No Violation)
3/17/2008	Kimo Crossman (08018)	Clerk of the Board, SOTF Administrator	Task Force 4/22/08 [Violation 67.21-1 (a)]; CAC 5/14/08 (No formal action taken)
4/8/2008	Kimo Crossman (08019)	Clerk of the Board, SOTF Administrator, DTIS	Task Force 4/22/08 (No Violation)
4/8/2008	Peter Witt (08020)	SF Taxi Commission	Task Force 4/22/08; 5/27/08 (Violation §67.15; 67.16)
5/2/2008	Kimo Crossman (08021)	City Attorney's Office	Task Force 5/27/08 (No violation)
5/2/2008	Kimo Crossman (08022)	Clerk of the Board	Task Force 5/27/08, 6/24/08 Contd to 7/22/08
5/20/2008	Anonymous (08023)	Planning Department	Task Force 6/24/08 Contd to 7/22/08
5/20/2008	Michael Addario (08024)	Arts Commission	Complaint 6/10/08, TF 6/24/08 Contd to 7/22/08
5/21/2008	Kimo Crossman (08025)	City Attorney	Task Force 6/24/08 Contd to 7/22/08
5/21/2008	Kimo Crossman (08026)	City Attorney	Task Force 6/24/08 Contd to 7/22/08

Complaints 2008

5/21/2008	Kimo Crossman (08027)	Mayor's Office of Criminal Justice	Task Force 6/24/08 Contd to 7/22/08
5/21/2008	Kimo Crossman (08028)	City Attorney	Task Force 6/24/08 Contd to 7/22/08
5/29/2008	Barry Taranto (080029)	Taxi Commission	Task Force 6/24/08 Contd to 7/22/08
5/29/2008	Kimo Crossman (08030)	COB, SOTF Administrator	Task Force 7/22/08
6/3/2008	Kimo Crossman (08031)	Ethics Commission	Task Force 7/22/08
6/4/2008	Kimo Crossman (08032)	City Attorney	Rask Force 7/22/08

Potential Complaints 2007

Date	Name	Concerns	Status
2/6/2008	Navy Keo	San Jose Police Department allegedly failed to redact personal information.	Referred to San Jose City Clerk/Clerk of the Board
2/12/2008	sswang168@aol.com	Juvenile Probation Commission possibly not providing 72 hours notice.	Doesn't want a hearing.
4/1/2008	Christian Holmer	Mayor's Office allegedly not providing daily calendar	Complaint form sent: No Response
5/21/2008	Kimo Crossman	City Attorney	Withdrawn
5/21/2008	Kimo Crossman	District Attorney	Withdrawn
5/21/2008	Kimo Crossman	Controller	Withdrawn
6/13/2008	Peter Warfield	Library	Pending
6/13/2008	Peter Warfield	Library	Pending
6/19/2008	Charles Pitt	Human Services	Pending

Referral Log 2005-2008

Date Referred/Sent	Complainant	Department/Respondent	Status
1/25/2005 (Sent 1/31/05)	Cheryl Brinkman, Pat Christensen, Sue Vaughan (#05004)	Golden Gate Park Concourse Authority	Referred to Ethics Commission (EC#06-06-052104 Dismissed: 9/12/06)
9/26/2006 (Sent 11/3/06)	Robert Planthold (#06004)	Municipal Transportation Agency	Referred to District Attorney (No Response); Referral to Ethics Commission (EC#10-061108 Dismissed: 4/10/07)
4/24/2007 (Sent 5/17/07)	Kimo Crossman (07002-A & B)	Mayor's Office	Referred to Ethics Commission (EC#01-70528 pending & 04-070801 pending) Referred to District Attorney (No Response) Referred to Attorney General [6/28/07 AG will not intervene: referred to EC]
6/26/2007 (Sent 7/30/2007)	Kimo Crossman (07009)	Mayor's Office	Referred to Board of Supervisors (No Response) Referred to Ethics Commission (EC#05-070808 pending) Referred to District Attorney (8/22/07 awaiting result of EC) Referred to Attorney General (No Response)
5/22/2007 (Sent 6/5/07)	Kimo Crossman (07011)	Sheriff's	Referred to the Board of Supervisors (No Response)
5/22/2007 (Sent 7/30/07)	Kimo Crossman (07023, 06025 & 06027)	Telecommunications and Information Services	Referred to Ethics Commission; (EC#02-070801 Dismissed: 1/16/08)
1/8/2008 (Sent 2/27/08)	Myrna Lim (07056)	Ethics Commission	Referred to Attorney General: Sent 2/27/08 [3/21/08 AG: Will not investigate...local matter.]
1/8/2008 (Sent 1/31/08)	Jeff Ente (07057)	Supervisor Aaron Peskin	Referred to Ethics Commission [04-080204 pending] Referred to Attorney General [3/24/08 AG: Will not investigate. referred to Ethics]
1/8/2008 (Sent 2/27/08)	Library Users Assoc. by Exec. Dir Peter Warfield (07061 & 07062)	Library	Referred to Attorney General [3/21/08 AG: Will not investigate...local matter.]
1/8/2008 (Sent 1/31/08)	Allen Grossman (07077)	District Attorney	Referred to Ethics Commission (EC#05-080204 pending) Referred to Attorney General [3/24/08 AG: Will not investigate. referred to Ethics]
3/25/2008 (Sent 3/24/08)	Dan Boreen (07080-A, B, & C)	Fire Department	Referred to Ethics Commission (EC#13-080424 pending) 6/19/2008

Referral Log 2005-2008

3/25/2008 (Sent 4/24/08)	Allen Grossman (07087)	Mayor's Office	Referred to Ethics Commission (EC# 15-080424 pending)
3/25/2008 (Sent 4/24/08)	Kimo Crossman (07094)	City Attorney	Referred to Ethics Commission (EC#14-080424 pending)
4/22/2008 (Sent 5/13/08)	Kimo Crossman (07096)	Mayor's Office	Referred to Ethics Commission (EC#17-080513 pending)
4/22/2008 (Sent 5/13/08)	Kimo Crossman (08004, 08005, 08007)	City Attorney	Referred to Ethics Commission (EC#18-080513 pending)
4/22/2008 (Sent 5/13/08)	Kimo Crossman (08006)	City Attorney	Referred to Ethics Commission (EC#19-080513 pending)
5/27/2008 (Sent 6/13/08)	Kimo Crossman (08013)	SOTF-A	Referred to Board of Supervisors

COMMUNICATIONS RECEIVED LOG

May 21, 2008 through June 19, 2008

	DATE	FROM	DESCRIPTION
1	13-May	Kimo Crossman	referral to PIO Alexis Thompson
2	13-May	Kimo Crossman	referral to Mayor's office
3	20-May	Rita O'Flynn	records request
4	20-May	Kimo Crossman	digital recordings (3)
5	20-May	Joe Lynn	digital recordings
6	21-May	Jaron Browne	records request
7	22-May	Kimo Crossman	Ethics files
8	22-May	Kimo Crossman	Ed Jew documents
9	22-May	Allen Grossman	Zarefsky letter
10	23-May	Kimo Crossman	Rules agenda (2)
11	23-May	Bruce Wolfe	Rules agenda
12	22-May	Tamara Odisho	Peter Witts request
13	28-May	Kimo Crossman	Oral info
14	28-May	Kimo Crossman	St. Croix presentation
15	28-May	Kimo Crossman	ordinance amendments
16	29-May	Kimo Crossman	instructional memos
17	2-Jun	Allen Grossman	ordinance amendments
18	28-May	Kimo Crossman	redactions
19	29-May	Kimo Crossman	Oral info
20	3-Jun	Leslie Henslee	RFQs & RFPs
21	5-Jun	Kimo Crossman	SOTF appointments (2)
22	5-Jun	Myrna Lim	TV interview
23	6-Jun	CFAC	Newsletter (2)
24	6-Jun	Allen Grossman	Referral log
25	5-Jun	Kimo Crossman	Outstanding complaints
26	9-Jun	Allen Grossman	Referrals to Ethics
27	11-Jun	Richard Knee	digital recordings
28	12-Jun	Kimo Crossman	VA court challenge on SSN
29	14-Jun	Allen Grossman	State of SO amendments
30	14-Jun	Kimo Crossman	State of SO amendments
31	14-Jun	Richard Knee	State of SO amendments (2)
32	14-Jun	Doug Comstock	State of SO amendments
33	17-Jun	Heath Maddox	agenda posting



John
St.Croix/ETHICS/SFGOV
05/29/2008 11:36 AM

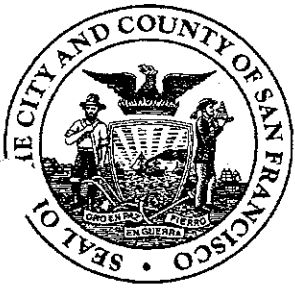
To SOTF/SOTF/SFGOV@SFGOV, Chris
Rustom/BOS/SFGOV@SFGOV
cc
bcc
Subject Fw: SOTF Referral Status

Per your 5/20 request.

John St. Croix
Executive Director, San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102-6053



SOTF.Status.xls



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

CONFIDENTIAL

SUSAN J. HARRIMAN
CHAIRPERSON

EMI GUSUKUMA
VICE-CHAIRPERSON

EILEEN HANSEN
COMMISSIONER

JAMIENNE S. STUDLEY
COMMISSIONER

CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

VIA INTEROFFICE MAIL

May 28, 2008

Doug Comstock, Chair
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689

Dear Mr. Comstock:

The Ethics Commission received a complaint referral (#07094) from the Sunshine Ordinance Task Force on April 24, 2008. The complaint has been assigned **Complaint No. 14-080424**. We will review the evidence you provided and contact you if we need any further information.

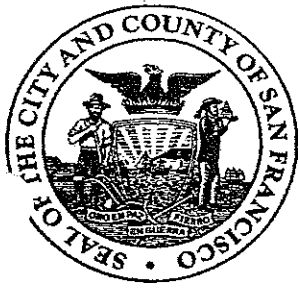
The City Charter and the Ethics Commission's Enforcement Regulations require that all complaints and related materials and deliberations be kept confidential prior to a probable cause determination. For this reason, the Commission cannot comment on the status of a particular complaint until it has been resolved.

If you have further questions regarding the Commission's procedures for investigations and enforcement proceedings, please call the Ethics Commission office at (415) 252-3100.

Sincerely,

Catherine Argumedo
Investigator/Legal Analyst

<u>Date Referred</u>	<u>Complainant/Sunshine #</u>	<u>Respondent</u>	<u>EC Case #</u>	<u>Status</u>
5/17/2007	Crossman 07002 A & B	Mayor's Office	01-070528, 04-070801	Pending
7/30/2007	Crossman 07009	Mayor's Office	05-070808	Pending
1/31/2008	Ente 07057	Sup Peskin	04-080204	Pending
1/31/2008	Grossman 07077	District Atty	05-080204	Pending
4/24/2008	Boreen 07080 A, B & C	Fire Dept	13-080424	Pending
4/24/2008	Grossman 07087	Mayor's Office	15-080424	Pending
4/24/2008	Crossman 07094	City Atty	14-080424	Pending
5/13/2008	Crossman 07096	Mayor's Office	17-080513	Pending
5/13/2008	Crossman 08004, 08005, 08007	City Atty	18-080513	Pending
5/13/2008	Crossman 08006	City Atty	19-080513	Pending



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

SUSAN J. HARRIMAN
CHAIRPERSON

EMI GUSUKUMA
VICE-CHAIRPERSON

EILEEN HANSEN
COMMISSIONER

JAMIENNE S. STUDLEY
COMMISSIONER

CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Sent via inter-office mail

May 30, 2008

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

Re: Complaint Filed with Ethics Commission

Dear Chairperson Comstock:

The Ethics Commission is in receipt of the complaint referred to this office on April 24, 2008 (Sunshine Ordinance Task Force Complaint #07080). The complaint has been assigned as **Complaint No. 13-080424**. The City Charter and the Ethics Commission's Enforcement Regulations require that all complaints and related materials and deliberations be kept confidential prior to a probable cause determination. For this reason, the Commission cannot comment on the status of a particular complaint until it has been resolved.

If the Commission needs additional information from you regarding this matter, a member of the enforcement staff will contact you.

If you have any questions please call me at (415) 252-3100.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Chatfield".

Garrett Chatfield
Investigator/Legal Analyst



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

SUSAN J. HARRIMAN
CHAIRPERSON

EMI GUSUKUMA
VICE-CHAIRPERSON

EILEEN HANSEN
COMMISSIONER

JAMIENNE S. STUDLEY
COMMISSIONER

CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Sent via inter-office mail

May 30, 2008

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

Re: Complaint Filed with Ethics Commission

Dear Chairperson Comstock:

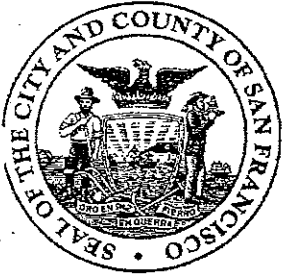
The Ethics Commission is in receipt of the complaint referred to this office on April 24, 2008 (Sunshine Ordinance Task Force Complaint #07087). The complaint has been assigned as **Complaint No. 15-080424**. The City Charter and the Ethics Commission's Enforcement Regulations require that all complaints and related materials and deliberations be kept confidential prior to a probable cause determination. For this reason, the Commission cannot comment on the status of a particular complaint until it has been resolved.

If the Commission needs additional information from you regarding this matter, a member of the enforcement staff will contact you.

If you have any questions please call me at (415) 252-3100.

Sincerely,

Garrett Chatfield
Investigator/Legal Analyst



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

SUSAN J. HARRIMAN
CHAIRPERSON

EMI GUSUKUMA
VICE-CHAIRPERSON

EILEEN HANSEN
COMMISSIONER

JAMIENNE S. STUDLEY
COMMISSIONER

CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Sent via Interoffice Mail

June 11, 2008

CONFIDENTIAL

Doug Comstock, Chair
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689

Dear Mr. Comstock:

The Ethics Commission received referrals (#08004; 08005; 08007) from the Sunshine Ordinance Task Force on May 13, 2008. The referrals have been assigned **Complaint No. 19-080513**. We will review the evidence you provided and contact you if we need any further information.

The City Charter and Ethics Commission Enforcement Regulations require that all complaints and investigatory materials be kept confidential prior to a probable cause determination. For this reason, the Commission cannot comment on the status of a complaint until it has been resolved.

If you have further questions regarding the Commission's procedures for investigations and enforcement proceedings, please call the Ethics Commission office at (415) 252-3100.

Sincerely,

Paul Solis
Staff Investigator



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

SUSAN J. HARRIMAN
CHAIRPERSON

EMI GUSUKUMA
VICE-CHAIRPERSON

EILEEN HANSEN
COMMISSIONER

JAMIENNE S. STUDLEY
COMMISSIONER

CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Sent via Interoffice Mail

June 11, 2008

CONFIDENTIAL

Doug Comstock, Chair
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689

Dear Mr. Comstock:

The Ethics Commission received a referral (#08006) from the Sunshine Ordinance Task Force on May 13, 2008. The referral has been assigned **Complaint No. 18-080513**. We will review the evidence you provided and contact you if we need any further information.

The City Charter and Ethics Commission Enforcement Regulations require that all complaints and investigatory materials be kept confidential prior to a probable cause determination. For this reason, the Commission cannot comment on the status of a complaint until it has been resolved.

If you have further questions regarding the Commission's procedures for investigations and enforcement proceedings, please call the Ethics Commission office at (415) 252-3100.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Solis".

Paul Solis
Staff Investigator

SUNSHINE ORDINANCE
TASK FORCE



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

June 5, 2008

Honorable Board of Supervisors
City Hall, Room 244
No. 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102.

Regarding: #08013 complaint of Kimo Crossman, and the March 25, 2008, Order of Determination from the Sunshine Ordinance Task Force against Frank Darby, Administrator of the Sunshine Ordinance Task Force for failure to comply with the Order of Determination.

At their regular meeting on Tuesday, May 27, 2008, the San Francisco Sunshine Ordinance Task Force ordered that the attached complaint #08013 of Kimo Crossman and the March 25, 2008 Task Force Order of Determination be referred to the Board of Supervisors for enforcement.

The Task Force found that the Administrator of the Sunshine Ordinance Task Force in violation of Section 67.21 (a) of the Sunshine Ordinance for willful failure to comply with the Sunshine Ordinance, failure to keep withholding of public records to a minimum, and failure to provide unredacted personal e-mail addresses in response to the Sunshine request.

This request and referral is made under Section 67.30 (c) whereby the Task Force shall make referrals to a municipal office with enforcement power under the Sunshine Ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this Ordinance or the Acts.

Attached are: (1) the copy of the complaint filed by Mr. Crossman; (2) the Order of Determination issued on March 31, 2008; (3) the final minutes of the Task Force meeting of March 25, 2008; (4) the final minutes of the Compliance and Amendments Committee meeting of April 9, 2008; (5) draft minutes of the Task Force meeting for April 22, 2008; and (6) draft minutes of the Task Force meeting for May 27, 2008. The final minutes will be forwarded upon approval.

Board of Supervisors
June 5, 2008
Page 2 of 2

If you need any further information, including tape recordings of any of the meetings referenced above, please feel free to contact me, or the Task Force Administrator Frank Darby at (415) 554-7724.



Doug Comstock, Chair
Sunshine Ordinance Task Force

cc: Honorable Supervisor Michela Alioto-Pier
Honorable Tom Ammiano
Honorable Chris Daly
Honorable Bevan Dufty
Honorable Sean Elsbernd
Honorable Carmen Chu
Honorable Sophie Maxwell
Honorable Jake McGoldrick
Honorable Ross Mirkarimi
Honorable Aaron Peskin
Honorable Gerardo Sandoval
Angela Calvillo, Clerk of the Board of Supervisors
Ernie Llorente, Deputy City Attorney
Kimo Crossman, Complaint
Frank Darby, Records and Information Manager

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

PAULA JESSON
Deputy City Attorney

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

June 17, 2008

Frank Darby, Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

Re: Supervisor of Records Responses to Laura Carroll

Dear Mr. Darby:

Laura Carroll filed a petition asking that the Supervisor of Records review MOH's withholding of records based on the attorney-client privilege. That review is now complete. At MOH's request, I am providing copies of the four letters of determination issued by the Supervisor of Records in response to Ms. Carroll's initial petition and additional correspondence relating to the petition. The letters are dated January 7, 2008, February 29, 2008, April 21, 2008, and June 10, 2008.

Very truly yours,

DENNIS J. HERRERA
City Attorney

A handwritten signature in cursive script that reads "Paula Jesson".

Paula Jesson
Deputy City Attorney

Enclosures

cc: Laura Carroll (without enclosures)
Douglas Shoemaker (without enclosures)
Ruby Harris (without enclosures)

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

PAULA JESSON
Deputy City Attorney

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

January 7, 2008

Laura Carroll
256 Presidio Avenue, #6
San Francisco, CA 94115

Re: Petition to the Supervisor of Records

Dear Ms. Carroll:

You have asked this office, in its role as Supervisor of Records, to determine whether the Mayor's Office of Housing ("MOH") properly withheld records based on the attorney-client privilege.

By way of background, we note that you made several public records requests to the MOH in 2007, which we understand are the subject of your petition. Copies of correspondence provided to this office from MOH include several requests in 2007 and correspondence between you and MOH regarding the status of and clarifications regarding these requests. While we do not repeat the requests in full, we note that they generally relate to below market restrictions in local law adopted as part of the City's condominium conversion program, including documents relating to property that you own.

In the course of responding to your requests, MOH provided you with access to and copies of numerous records, but withheld others based on the attorney-client privilege.

You filed a complaint regarding your requests with the Sunshine Ordinance Task Force, which issued an Order of Determination on November 27, 2007. In that Order, the Task Force found MOH in violation of the Sunshine Ordinance "for failure to respond in a timely manner," ordered MOH to "produce to the Task Force and the complainant the correspondence from the City Attorney's Office specifying which documents MOH was advised to withhold from release on the basis of the attorney-client privilege," and instructed MOH "to double check to ensure that the withholding was as narrow as possible and whether redacted documents can be provided in certain circumstances."

In your petition to the Supervisor of Records, sent by email on December 18, 2007, you ask that the Supervisor of Records examine the legitimacy of MOH's withholding of records based on the attorney-client privilege. Referring to that portion of the Sunshine Ordinance Task Force Order relating to the correspondence from the City Attorney's Office specifying which documents MOH was advised to withhold, you ask that we assist you in obtaining the letter.

In further email correspondence with you on January 2, 2008, you provided this office with a copy of a letter dated December 21, 2007 to you from the Deputy Director of MOH, Douglas Shoemaker, in which he addresses some missing information in MOH's files relating to your property. Because the City Attorney's office also has a file relating to your property, MOH had asked this office to provide a duplicate set of its file to MOH. As a result, MOH was providing you with additional correspondence. Deputy Director Shoemaker also stated, however, that MOH was not providing documents that are confidential attorney-client communications.

Letter to Laura Carroll
Page 3
January 7, 2008

As noted above, MOH properly withheld the vast majority of records in response to your public records requests under the attorney-client privilege. Neither the Public Records Act nor the Sunshine Ordinance requires an agency to provide records protected by the attorney-client privilege. See California Government Code Sections 6254(k) (public agency may withhold "records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege") and 6276.04 (among the records which may be withheld under Section 6254(k) are confidential attorney-client communications); California Evidence Code Section 954 (protecting from disclosure confidential communications between attorneys and their clients); and S.F. Admin. Code §67.21(k) (release of public records shall be governed by the California Public Records Act in particulars not addressed by the Sunshine Ordinance and in accordance with the enhanced disclosure requirements provided by the Sunshine Ordinance).

You note that you are not involved in litigation regarding the matters for which you request records from MOH. The attorney-client privilege applies to confidential communications between attorneys and their clients whether or not the communication involves a litigated matter.

Additional Correspondence from the City Attorney's Office

As noted above, you and the Sunshine Ordinance Task Force have expressed concern that there is a letter from the City Attorney's Office to MOH regarding redactions, presumably those made under the attorney-client privilege. In your petition, you state that you understand that such a letter is required when records are redacted. Such a letter is not required. In fact, this office typically does not send such letters, although it is not unusual for deputies to confer directly with City departments in the course of their responding to public records requests in order to help them determine whether the attorney-client privilege or other privileges or exceptions apply. In this case, there is no letter or other document from the City Attorney's office relating to MOH's withholding of records in response to your request based on the attorney-client privilege.

Why MOH Documents Were Not Made Available Earlier

As described above, Deputy Director Shoemaker sent you a letter dated December 21, 2007, informing you that he was providing you with additional correspondence relating to your property. You stated in your message regarding these records that it would be helpful to know why they were not made available until now. We do not address this issue because of the limited role of the Supervisor of Records. When acting as Supervisor of Records, this office's role is to determine whether "the record requested, or any part of the record requested, is public." S.F. Admin. Code §67.21(d). Accordingly, we do not consider or decide this issue.

Final Remarks

We have informed Deputy Director Shoemaker of our determination. In light of that advice, he has agreed to provide you with a copy of the documents described above that we have determined contain both confidential and non-confidential communications. His agency will redact the protected communications from the copies that he provides to you. Please call Deputy Director Shoemaker at 701-5509 to make the arrangements to obtain these documents.

If you have any questions regarding this matter, please feel free to call.

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

PAULA JESSON
Deputy City Attorney

DIRECT DIAL: (415) 554-6762

E-MAIL: paula.jesson@sfgov.org

February 29, 2008

Laura Carroll
256 Presidio Avenue, #6
San Francisco, CA 94115

Re: Petition to Supervisor of Records

Dear Ms. Carroll:

On January 7, 2008, this office sent you a response to your petition to the Supervisor of Records regarding the withholding by the Mayor's Office of Housing ("MOH") of records that you had requested, based on the attorney-client privilege. In responding to your petition, the Supervisor of Records informed you that this office was not addressing records relating to "released" units, which are units released from the below market restrictions of the City's condominium conversion program. The decision not to address those records was based on MOH staff's informing this office that MOH had provided you with samples of records relating to released units and, in addition, had also offered you the opportunity to review five boxes of files with records relating to released units, but that you had not yet reviewed those additional records. We noted that once you had conducted that review, you could file a petition with this office as to any records on released units that MOH withheld.

As to the records that MOH withheld that the Supervisor of Records reviewed, we informed you of our determination that MOH properly withheld the vast majority of documents based on the attorney-client privilege, but that several documents contained both confidential and non-confidential communications, that the confidential portions were reasonably segregable from the non-confidential portions, and that MOH had agreed to disclose redacted versions of those documents. I understand that MOH has provided the documents to you.

Our response to your petition also addressed your request for a copy of correspondence from this office to MOH regarding redactions of records covered by your requests, presumably referring to redactions that were made based on the attorney-client privilege. The Sunshine Ordinance Task Force had expressed concern that there was such a letter, but that it had not been provided to you. Our response also informed you that such a letter is not required and that this office typically does not send such letters, although it is not unusual for deputies to confer orally with City departments in order to help them determine whether a public records request calls for documents protected by the attorney-client privilege or other privileges. Our January 7, 2008 response confirmed that there was no such letter or other written communication.

You responded to the January 7, 2008 letter from the Supervisor of Records by letter dated January 15, 2008, raising several issues. We address those issues below.

1. Scope of Review and Further Response Based on the Review of Additional Documents Provided by MOH

You express concern that the Supervisor of Records did not adequately review all of the

Letter to Laura Carroll
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February 29, 2008

documents related to your property). You and MOH have divergent views regarding your requests and MOH's response. The Supervisor of Records need not attempt to resolve these differing views because MOH has agreed to provide to the Supervisor of Records all documents that it believes to be confidential attorney-client communications covered by the categories described in your January 15, 2008 letter (in "bulleted" paragraphs), through that date, that it has not already provided to the Supervisor of Records in connection with your original appeal.

As of today, MOH has provided the Supervisor of Records with all such documents, with the exception of the records described in the second and third paragraphs of your letter:

[2] documents pertaining to any BMR that has been granted buyouts, in lieu payments or any other agreement that released them from the moderate income housing stock, released resale restrictions, or allowed owners to sell without below market rate restrictions; and

[3] documents pertaining to any BMRs that have been sold in violation of resale restrictions).

Although MOH does not believe that there will be many confidential attorney-client communications among the records described in the second and third "bulleted" paragraphs, because of the large number of files that MOH will nonetheless need to review, it will take MOH additional time to undertake that review and to provide to this office any documents involving attorney-client communications that MOH believes may be properly withheld. MOH has informed us that it expects to have this additional review done in about four weeks. The Supervisor of Records will then consider whether the documents are protected by the attorney-client privilege and issue a determination.

Having reviewed the additional records that MOH has provided which, as noted above, are from all categories described in the "bulleted" descriptions of your letter except the two described above, the Supervisor of Records has determined that some of the records are not protected. As in our review of records in connection with your original appeal, we have found that the vast majority of withheld records are protected by the attorney-client privilege. But some of the records, although involving communications with attorneys, are not privileged confidential attorney-client communications, either in whole or in part.

Where the records include both privileged and non-privileged communications, the former are reasonably segregable from the latter and MOH will provide you with a copy of these records, with the confidential portions redacted. These three records are:

Email communication from D. Domer to Ruby Harris regarding "Scanned document attached 160 Garden side." This document contains several communications. All but one are confidential attorney-client communications. MOH will redact the portions that are confidential attorney-client communications and disclose the one non-confidential communication. (4 pages)

Email communication from Ruby Harris to Douglas Shoemaker and others dated 09/22/2006. This document contains several communications. MOH will redact the portions that are confidential attorney-client communications and disclose the one non-confidential communication (which is partially redacted to protect confidential attorney client communication). (4 pages)

Email communication from Lori Bamberger to Maggie Davis and others dated 12/01/2005 regarding "Goldmine Hill Condo Moderate Income Restriction Issue." This document

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4. Communications with the City Attorney's Office regarding Sunshine Requests

You request *"that all records, paper or electronic, that involve your office communicating with anyone at MOH regarding whether attorney client privilege or other privileges apply to our Sunshine requests and involve advise on the Sunshine Ordinance be reviewed for proper withholding."*

We understand from MOH that in response to action taken by the Sunshine Ordinance Task Force, it is publicly disclosing all documents with this office regarding Sunshine requests. We understand from MOH that it has provided you with Sunshine-related documents between MOH and this office by letter dated January 2, 2008 and that it has located the remainder of the documents between this office and MOH regarding Sunshine requests, which MOH will also send to you. Since MOH is making these documents public, the Supervisor of Records had no reason to review them.

5. Neutral Review of the Petition to the Supervisor of Records

You request confirmation of a neutral review of your petition, stating as follow:

"Lastly, I requested a neutral party in your office review all MOH privileged documents to ensure withholding of public records has been as narrow as possible, and that the neutral party assigned to this not be the attorney or any staff that MOH has worked with regarding proposed MOH policy and procedure changes. Please confirm that this neutral assignment did indeed occur. For my records, if you can provide me with the name of the reviewer, I would like this information as well."

I was the person assigned by this office to review your petition. I have not worked with MOH regarding proposed MOH policy and procedure changes.

Concluding Remarks

As discussed above, there remains an additional set of records from MOH that the Supervisor of Records will review in response to your January 15, 2008 letter. These records are from the second and third "bulleted" paragraphs of your letter. I am informed by MOH that they expect to furnish these records to this office within the next four weeks. The Supervisor of Records will then consider whether the documents are protected by the attorney-client privilege and issue a determination.

Very truly yours,

DENNIS J. HERRERA
City Attorney



Paula Jesson
Deputy City Attorney

cc: Douglas Shoemaker
Deputy Director, MOH

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

PAULA JESSON
Deputy City Attorney

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

April 21, 2008

Laura Carroll
256 Presidio Avenue, #6
San Francisco, CA 94115

Re: Petition to Supervisor of Records

Dear Ms. Carroll:

The Supervisor of Records has reviewed the final group of records from the list of the categories set forth in the bulleted paragraphs of your January 15, 2008 letter (which responded to the January 7, 2008 response by the Supervisor of Records to your initial petition).

Again, we found that MOH properly withheld the vast majority of records based on the attorney-client privilege. However, two records – although they involved communications with a deputy city attorney– were also sent to parties who were not City employees. The transmission to parties outside the City shows no intent to communicate confidentially with a client, making the attorney-client privilege inapplicable. These two communications are:

August 7, 1996 letter to Deputy City Attorney John Malamut from MOH (one page – although the letter refers to attachments, MOH has informed me that MOH has been unable to locate the attachments in their files)

May 19, 1992 Fax to David Hood, Joe LaTorre and David Cincotta from Deputy City Attorney Leslie Braverman, with attachments (total of 10 pages)

In addition, MOH has a complaint from a court action entitled *Ernesto Estenez v. First American Title Insurance Company*, Superior Court No. CGC-07-469460.

There remains a final issue. Although MOH has now provided the Supervisor of Records with all records withheld under the attorney-client privilege covered by your requests (including the categories described in your January 15, 2008 letter), MOH has agreed to review all of its remaining records relating to the City's Condo Conversion Program. If they believe that any of those records are subject to the attorney-client privilege, MOH will then provide those records to the Supervisor of Records for review.

Very truly yours,

DENNIS J. HERRERA
City Attorney


Paula Jesson
Deputy City Attorney

CITY AND COUNTY OF SAN FRANCISCO



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June 10, 2008

Laura Carroll
256 Presidio Avenue, #6
San Francisco, CA 94115

Re: Petition to Supervisor of Records

Dear Ms. Carroll:

Pursuant to an appeal that you initially sent to this office on December 18, 2007 and that you supplemented through further correspondence, the Supervisor of Records has over a period of months reviewed records as MOH provided them to this office to determine whether MOH properly withheld the records under the attorney-client privilege. The Supervisor of Records has provided you with determinations in several different letters, sent as the Supervisor of Records reviewed the records.

MOH has now provided, and the Supervisor of Records has reviewed, the final group of records relating to the City's Condo Conversion Program and has determined that all were properly withheld under the attorney-client privilege.

With this last determination, the Supervisor of Records considers your appeal resolved.

Very truly yours,

DENNIS J. HERRERA
City Attorney

A handwritten signature in cursive script that reads "Paula Jesson".

Paula Jesson
Deputy City Attorney

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

PAULA JESSON
Deputy City Attorney

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June 4, 2008

Doug Comstock, Chair
Sunshine Ordinance Task Force
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Re: Annual Report of the Supervisor of Records

Dear Mr. Comstock:

I write in response to your letter of May 20, 2008 to the City Attorney. In that letter, you ask that this office provide along with its Annual Report of the Supervisor of Records a companion report on court decisions brought during the same time period related to the Sunshine Ordinance.

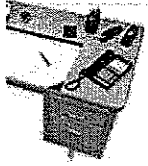
This office will be happy to provide this information where the City is a party to the action.

Very truly yours,

DENNIS J. HERRERA
City Attorney

A handwritten signature in cursive script that reads "Paula Jesson".

Paula Jesson
Deputy City Attorney



Ernest
Llorente/CTYATT@CTYATT
06/13/2008 04:45 PM

To SOTF/SOTF/SFGOV@SFGOV, Frank
Darby/BOS/SFGOV@SFGOV, Chris
Rustom/BOS/SFGOV@SFGOV
cc
bcc
Subject S.B. 343 Requirements -- Including New Form Agenda
Notice

Hi Frank and Chris,
Please see below information.

With the passage of S.B. 343 (Ch. 298, Stats. 2007), the Legislature amended the Brown Act, effective July 1, 2008, to provide that:

- a policy body must make available for public inspection at a designated public office or location, any writing subject to public disclosure that relates to an open session of a regular meeting of the body and is distributed to a majority of the members less than 72 hours before the meeting; the writing must be made available to the public at the time it is distributed to a majority of the policy body (the "availability requirement"); and
- the policy body must list the address of this location on the agendas for all meetings of the policy body (the "agenda requirement").

S.B. 343's availability requirement does not specifically apply to special meetings. Nevertheless, the City Attorney's Office recommends, consistent with the spirit of the Sunshine Ordinance, which requires 72 hours' notice of special meetings, that policy bodies adhere to that requirement with respect to both regular and special meetings. Also, while the availability requirement literally applies to materials distributed less than 72 hours before the meeting, the intent of the law was to encompass materials distributed to a majority of the members of the policy body at any time after the agenda packet has been distributed to them.

To comply with S.B. 343's agenda requirement, every policy body should include a notice on every agenda for every meeting as follows: "If any materials related to an item on this agenda have been distributed to the [specify: commission/board/committee/advisory group, etc.] after distribution of the agenda packet, those materials are available for public inspection at [specify: name of office and location] during normal office hours."

In particular, it is important that the form notice mentioned above appear on meeting agendas. Please contact me if you have any questions. Thanks.
Ernie

**SUNSHINE ORDINANCE
TASK FORCE**



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1 Dr. Carlton B. Goodlett Place, Room 244
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TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION

DATE THE DECISION ISSUED

June 4, 2008

PETER WITT v. TAXI COMMISSION (08020)

FACTS OF THE CASE

Complainant Peter Witt, who regularly attends Taxi Commission meetings, claimed that when he attended the 7/25/06, 10/24/06, 2/13/07, 4/10/07, 11/27/07, 2/26/08 and 3/11/08 meetings, the Commission committed the following acts: Interrupting public speaker, depriving public speaker of equal speaking time, removing a public speaker from the meeting, misrepresentation of statements, excluding written statements that were less than 150 words from the minutes, deleting public testimony from the minutes, failure to allow additional time for set-up procedure, and discussing a subject that was not on the agenda.

COMPLAINT FILED

On 4/1/08 Peter Witt filed a complaint that did not specifically list the sections of the Sunshine Ordinance that were violated but described the violations as listed above.

HEARING ON THE COMPLAINT

On May 27, 2008, Complainant Peter Witt appeared before the Task Force and presented his claim. Respondent Agency was represented by Jordanna Thigpen, who presented the Agency's defense. Mr. Witt presented video clips from two meetings of the Taxi Commission, where he claimed public comment was interrupted and also asserted that various 150 word written statements submitted to the Commission were not included in the minutes as required by the Sunshine Ordinance. Ms. Thigpen responded that there probably was a violation for interrupting a public speaker during public comment during the 10/24/06 meeting and asked the Task Force for guidance regarding how much leeway the Commission should allow members of the public during public comment time as well as guidance on other matters.

The issue in the case is whether the Agency violated Section(s) 67.7, 67.15 and 67.16 of the Ordinance and/or Sections 54957.9 of the California Public Records Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented, the Task Force finds that sections 67.15 and 67.16 are applicable in this case. Specifically, during the 10/24/06 meeting, the Task

ORDER OF DETERMINATION

Force found that the Chair of the Commission impermissibly interrupted and prevented Mr. Witt from providing public comment on an agenda item, thereby depriving Mr. Witt of equal speaking time. The Task Force also found that the Taxi Commission failed to include brief written statements of testimony, provided by Mr. Witt to the Commission, in the Commission minutes.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Section(s) 67.15 and 67.16 of the Sunshine Ordinance for interrupting a public speaker, depriving a public speaker of equal speaking time, and failure to include a brief (written statement) in the minutes.

The Task Force directs the Taxi Commission to allow the public the opportunity to give their public comment on an agenda item without interruption; so long as/until the point which it becomes clear that the public comment has no relation to the agenda item under discussion. The Task Force also encourages the Chair to use his/her broad discretion to allow public comment to continue and to err on the side of allowing public comment to proceed to the full allotted time.

The Task Force further recommends that the Taxi Commission adopt and publicize procedures to facilitate the use of audio-video presentations by public speakers. For example, by providing notice in agendas and on the Commission's website that public speakers who intend to use audio-visual equipment at a particular meeting contact the Commission secretary in advance to discuss their needs, and that the staff member assist the public speaker with providing audio-video presentations as feasible.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on May 27, 2008 by the following vote: (Craven / Knee)

Ayes: Craven, Knee, Cauthen, Gokhale, Washburn, Comstock, Pilpel, Chu, Chan, Goldman, Williams



Doug Comstock, Chair
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney
Peter Witt, Complainant
Jordanna Thigpen, Respondent

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

DATE THE DECISION ISSUED

June 4, 2008

KIMO CROSSMAN v. SAN FRANCISCO CITY ATTORNEY'S OFFICE (08021)

FACTS OF THE CASE

Kimo Crossman states the following:

On or about April 18, 2008, Kimo Crossman called DCA Buck Delventhal and asked to speak with him about the Sunshine Ordinance consulting meeting between himself, Supervisor Maxwell and Supervisor Peskin and/or his staff. Kimo Crossman stated that DCA Delventhal refused to assist him and referred him to Public Information Officer Matt Dorsey ("PIO"). Kimo Crossman stated that DCA Delventhal claimed that only the PIO has to provide oral information under the Ordinance.

COMPLAINT FILED

On April 30, 2008, Kimo Crossman filed a complaint against City Attorney's Office alleging violations of Sections, 67.21(a) and 67.20(b), 67.22(b), and 67.22(c) of the Sunshine Ordinance.

HEARING ON THE COMPLAINT

On May 27, 2008, Complainant Kimo Crossman appeared before the Task Force and presented his claim. Respondent Agency did not attend and submitted no written response to the Complaint.

The issue in the case is whether the Agency violated Section(s) 67.21 and 67.22 of the Ordinance and/or Sections 6253 of the California Public Records Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented the Task Force found that this very issue was raised in a prior Complaint filed by Mr. Crossman, where the Task Force did not find a violation. In response to this Complaint, the Task Force does not find that the City Attorney's office violated sections 67.21 and 67.22 of the Ordinance by Mr. Deventhal's refusal to provide oral information on the specific topics requested by Mr. Crossman.

ORDER OF DETERMINATION

DECISION AND ORDER OF DETERMINATION

The Task Force found that there was no violation.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on May 27, 2008, by the following vote: (Craven / Knee)

Ayes: Craven, Knee, Cauthen, Gokhale, Washburn, Comstock, Pilpel, Chu, Chan, Goldman, Williams



Douglas Comstock, Chair
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney
Kimo Crossman
Buck Delventhal