

Date: July 22, 2008

Item No. 4
File No. 08022

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Complaint by: Crossman vs COB**
- _____
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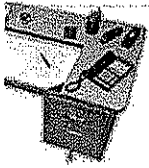
Completed by: Frank Darby

Date: July 16, 2008

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

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

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



Frank Darby/BOS/SFGOV

07/15/2008 02:14 PM

To SOTF/SOTF/SFGOV@SFGOV

cc

bcc

Subject: 08022_Clerks Office Response to SOTF Q & A

Attached below is the Office of the Clerk of the Boards response to Task Force questions during the May 27, 2008, meeting..



08022_Response to SOTF Q&A.doc

Frank Darby, Jr.
Records & Information Manager
Office of the Clerk of the Board of Supervisors

Complete a Board of Supervisors Customer Satisfaction form by clicking the link below.
http://www.sfgov.org/site/bdsupvrs_form.asp?id=18548

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 544-5227

July 14, 2008

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

Re: 08022_Kimo Crossman v. Clerk of the Board of Supervisors

Dear Task Force Members,

This letter is in response to your request during the May 27, 2008, Task Force meeting for steps taken to implement the Department's redaction policy. Below are the steps that were taken by the department.

- Forms that capture and identify private personal information received, collected and/or compiled by the department were revised to include a notice that the document is available for public review, and to further request authorization to release the personal information from the individual whose personal information has been obtained. (*See below*)

Enter your name, mailing address and daytime telephone number in the spaces provided. Because this form is a document available for public review, you may list your business/office address, telephone number and e-mail address in lieu of your home address or other personal contact information.

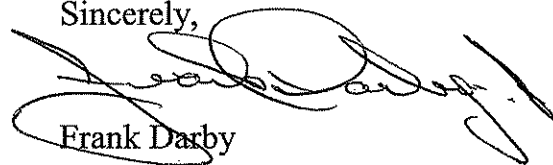
Do you authorize release of your private/personal information? yes no

- Personal information contained in Communication Pages (C Pages), Boards and Commissions applications, etc., are redacted prior to review and/or release to third parties, except when consent has been provided.
- Personal information contained in documents that make up the agenda packet are redacted prior to creation of the paper packet and/or posting on the Internet, except when consent has been provided.

Sunshine Ordinance Task Force
July 14, 2008
Page 2 of 2

Attached is a copy of the revised application form used to apply for Boards,
Commissions, and Committees.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Darby", written over a circular stamp or mark.

Frank Darby
Records and Information Manager



**Board of Supervisors
City and County of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, California 94102-4689
(415) 554-5184 FAX (415) 554-7714**

Application For Boards, Commissions and Committees

Application for Appointment to: _____
Name of Board, Commission, Committee, or Task Force

Seat # or Category (If Applicable): _____

Enter your name, mailing address and daytime telephone number in the spaces provided. Because this form is a document available for public review, you may list your business/office address, telephone number and e-mail address in lieu of your home address or other personal contact information.

Do you authorize release of your private/personal information? yes no

Print Name: _____
Home Address: _____ Zip _____
Home Phone: _____ Occupation: _____
Work Phone: _____ Employer: _____
Business Address: _____ Zip: _____
E-Mail Address: _____ Fax #: _____

Are you a United States citizen? Yes No (Citizenship is a mandatory requirement for all appointments)
Have you ever been convicted of a felony in this state, or convicted of any offense which, if committed in this state, would be a felony?
 Yes No. (If yes, please attach a statement describing the offense(s) for which you have been convicted, the date of those conviction(s), and the court(s) that convicted you.)

Education: _____

Business and/or professional experience: _____

Civic Activities: _____

Other Personal Information: (optional) _____

Ethnicity: (optional) _____ Sex: (optional) M F

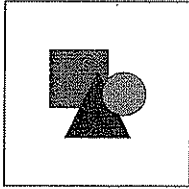
Have you attended any meetings of the Board/Commission to which you wish appointment? Yes No
Would you be able to attend night meetings? _____ Day meetings? _____ Either _____
Please state your qualifications (attach supplemental sheet if necessary) _____

For appointments by the Board of Supervisors, appearance before the RULES COMMITTEE is a requirement before any appointment can be made. (Applications must be received 10 days before the scheduled hearing.)

Date: _____ Applicant's Signature: (required) _____
Please Note: Your application will be retained for one year.

FOR OFFICE USE ONLY:

Appointed to Seat #: _____ Term Expires: _____ Date Seat was Vacated: _____



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

MEMORANDUM

May 14, 2008

KIMO CROSSMAN v. CLERK OF THE BOARD OF SUPERVISORS AND THE SOTF ADMINISTRATOR (08022)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

On or about April 21, 2008, Kimo Crossman asked to see the applications of Allyson M Washburn and Hanley Chan and received and reviewed applications that had the home address, home address and e-mail redacted. Kimo Crossman claims that the addresses should not have been redacted since Allyson Washburn's address and phone number is listed in the telephone directory and Hanley Chan's address is listed in Form 700 that is a public record.

COMPLAINANT FILES COMPLAINT

On April 30, 2008, Kimo Crossman filed a complaint online and alleged that that the Clerk of the Board of Supervisors and the Sunshine Ordinance Task Force Administrator violated Sections 67.21(a) and 67.26 of the Ordinance for its failure to provide the personal home addresses, home phone numbers and the e-mail addresses of the Applicants.

JURISDICTION

Based on the allegations of the complaint and the sections of the Ordinance stated below, the Task Force has jurisdiction to hear this matter. In addition the parties in this case do not contest jurisdiction.

APPLICABLE STATUTORY SECTIONS:

1. Sunshine Ordinance, San Francisco Administrative Code Section 67.21 addresses general requests for public documents including records in electronic format.
2. Sunshine Ordinance, San Francisco Administrative Code Section. 67.26 deals with withholding kept to a minimum.
3. Sunshine Ordinance, San Francisco Administrative Code Section. 67.27 deal with justification for withholding.

Memorandum

4. California Public Records Act, Government Code Section 6253 deals with public records open to inspection, agency duties, and time limits.
5. California Public Records Act, Government Code Section 6255 deals with justification for withholding of records.

APPLICABLE CASE LAW:

Courts have held one's residence and phone number to be private. In *United States Department of Defense v. Federal Labor Relations Authority ("Dept of Def")*, 510 U.S. 487, 494-501 (1994), the United States Supreme Court held that the home addresses of federal employees are exempt from disclosure to unions under the privacy exemption in the Freedom of Information Act. (The California Public Records Act is modeled on the Federal Freedom of Information Act).

The case of *Holman dba The San Diego Reader v. Superior Court (San Diego)* is a Court of Appeals decision that allows for disclosure of e-mail addresses in certain situations.

ISSUES TO BE DETERMINED**1. FACTUAL ISSUES****A. Uncontested Facts:**

The parties agree to the following facts:

- Crossman requested and received the Sunshine Ordinance Task Force applications of Allyson M. Washburn and Hanley Chan.
- The applications provided by the SOTF Administrator had the home addresses, home telephone numbers and e-mail addresses redacted.

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

Whether the Clerk of the Board of Supervisors and the SOTF Administrator complied with the Public Records laws by providing redacted applications?

2. QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- a.) none.

Memorandum

3. LEGAL ISSUES/ LEGAL DETERMINATIONS:

- **Were sections of the Sunshine Ordinance (Section 67.21), Brown Act, and/or Public Records Act were violated?**
- **Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?**

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS:

THE TASK FORCE FINDS THAT THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

Memorandum

**ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN
FRANCISCO ADMINISTRATIVE CODE (THE SUNSHINE ORDINANCE)
UNLESS OTHERWISE SPECIFIED**

Section 67.21 addresses general requests for public documents.

This section provides:

- a.) Every person having custody of any public record or public information, as defined herein, ... shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.
- b.) A custodian of a public record shall as soon as possible and within **ten days** (emphasis added) following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.
- c.) A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.
- ...
- k.) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirement provided in this ordinance.

Memorandum

1.) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department t program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

Section 67.26 provides:

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

Section 67.27 provides:

Any withholding of information shall be justified in writing, as follows:

- a.) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- b.) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act of elsewhere.
- c.) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- d.) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and

Memorandum

extent of the nonexempt information and suggest alternative sources for the information requested, if available.

California State Constitution, Article I, Section 1

§1 Inalienable rights

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

Sunshine Ordinance Section 67.1 provides:

g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public has the right to an open and public process.

The California Public Records Act is located in the state Government Code Sections 6250 et seq. All statutory references, unless stated otherwise, are to the Government Code.

Section 6253 provides.

- a.) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the records after deletion of the portions that are exempted by law.
- b.) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.
- c.) Each agency, upon a request for a copy of records, shall within 10 days from receipt of the request, determine whether the request, in whole

Memorandum

or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefore....

Section 6255 provides:

- a.) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.
- b.) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.



<complaints@sfgov.org>
04/30/2008 10:31 AM

To <soft@sfgov.org>
cc
bcc

Subject Sunshine Complaint

History: This message has been forwarded.

Submitted on: 4/30/2008 10:31:12 AM

Department: Clerk of the Board of Supervisors

Contacted: Clerk staff

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: 67.21 (a), 67.26, various sections of CPRA

Description: I went to the Clerk's office to inspect two original Sunshine applications under 6253 (b).

Instead, I was provided copies with the home address, home phone number and email address redacted.

Allyson M Washburn is listed in the phone book, she has no expectation of privacy.

Allyson M Washburn
home
782 Bay St
San Francisco, CA 94109-1321
(415) 440-0693
* Age: 55-59

And this address is her work address which means it would be on many many documents.

As already indicated, Hanley Chan has completed a Form 700 with home address information which is in the Ethics file room - all those documents are available to the public with no redactions.

Hearing: Yes

Date: 4/21/2008

Name: Kimo Crossman

Address:

City:

Zip:



"Kimo Crossman"
<kimo@webnetic.net>
04/21/2008 09:53 AM

To "Board of Supervisors" <Board.of.Supervisors@sfgov.org>,
"SOTF" <sotf@sfgov.org>
cc "Allen Grossman" <grossman356@mac.com>,
<home@prosf.org>
bcc
Subject SOTF Complaint - illegal redactions, no expectation of
privacy!

Submitted on: 4/21/08

Department: Clerk of the Board

Contacted: Clerk staff

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: 67.21 (a), 67.26, various sections of CPRA,

I asked for two SOTF applications and the home address, home phone and email were redacted illegally. See details below:

-----Original Message-----

From: Board of Supervisors [mailto:Board.of.Supervisors@sfgov.org]
Sent: Monday, April 21, 2008 8:51 AM
To: Kimo Crossman
Subject: BOS Response: SOTF Applications

Mr. Crossman,

As you are aware, the Office of the Clerk of the Board has already responded to your request for records including providing pacific legal justification for the redactions that were made. We try to reasonably assist requestors access to public records and/or information, however there is no requirement that we engage in any extended dialogue with the requestor who may disagree with our response to a request or handling of a request. To conserve the finite staff resources of the Clerk's Office and our ability to perform the many public duties required of this office we will not engage in any ongoing dialogue with you over this matter, but will limit our response to the extent the law requires.

Complete a Board of Supervisors Customer Satisfaction form by clicking the link below.

http://www.sfgov.org/site/bdsupvrs_form.asp?id=18548

"Kimo Crossman"
<kimo@webnetic.net>
To
<board.of.supervisors@sfgov.org>
04/18/2008 02:07 PM cc
Subject
FW: SOTF Applications - no
reasonable expectation of privacy!

Hello?

I send this information after meeting with Clerk staff on Friday 4/11 and have not received a legal response for the withholding

-----Original Message-----

From: Kimo Crossman [mailto:kimo@webnetic.net]
Sent: Friday, April 11, 2008 4:14 PM
To: 'Board of Supervisors'; 'mary.red@sfgov.org'
Cc: 'Allen Grossman'; 'Angela Calvillo'
Subject: RE: SOTF Applications - no reasonable expectation of privacy!
Importance: High

So I went to the Clerks office to inspect two original applications under 6253 (b).

Instead, I was provided copies with the home address, home phone number and email address redacted.

Allyson M Washburn is listed in the phone book, she has no expectation of privacy.

Allyson M Washburn
home
782 Bay St
San Francisco, CA 94109-1321
(415) 440-0693
* Age: 55-59

And this address is her work address which means it would be on many many documents.

As already indicated, Hanley Chan has completed a form 700 with home address information which is in the Ethics file room - all those documents are available to the public with NO REDACTIONS

Your process isn't consistent with your own C page, nor the Assessor documents, nor the Claim to the City for tort damages, nor the Ethics Commission.

A home address, phone or email are not automatically redactable - there is no specific law that allows for that.

What reasonable expectation of privacy for applications for a public position is there?

You can't just quote the potential exemptions - you have to apply specific facts and apply balancing tests.

Also you have provided absolutely no examples of even complaints to the city by people who felt that their privacy was invaded - that tells us that people do not have an expectation of privacy when they communicate with government.

Please see attached recent determination from SOTF that all email addresses on people who communicate with Government are not private.

-----Original Message-----

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

Sent: Friday, April 11, 2008 12:19 PM

To: 'Board of Supervisors'; 'mary.red@sfgov.org'

Cc: 'Allen Grossman'

Subject: RE: SOTF Applications

What reasonable expectation of privacy for applications for a public position is there?

You can't just quote the potential exemptions - you have to apply specific facts and apply balancing tests.

-----Original Message-----

From: Board of Supervisors [mailto:Board.of.Supervisors@sfgov.org]

Sent: Friday, April 11, 2008 11:58 AM

To: kimo@webnetic.net

Subject: Re: SOTF Applications

This responds to your email of 4/9/08, regarding redactions on the documents provided in the email below. Redactions of personal information were made pursuant to Cal. Gov. Code Section 6250, 6254 (c), 6254 (k), Cal. Constitution, Article I, Section 1, and Administrative Code Section 67.1 (g.)

Complete a Board of Supervisors Customer Satisfaction form by clicking the link below.

http://www.sfgov.org/site/bdsupvrs_form.asp?id=18548

Board of
Supervisors/BOS/S
FGOV
04/09/2008 12:52
PM

To
kimo@webnetic.net
cc

Subject
SOTF Applications

Pursuant to your request, attached are the applications for Hanley Chan and Allyson Washburn.

(See attached file: chan.pdf)(See attached file: washburn.pdf)

Complete a Board of Supervisors Customer Satisfaction form by clicking the link below.

http://www.sfgov.org/site/bdsupvrs_form.asp?id=18548

Board of
Supervisors /BOS/SFGOV
05/13/2008 10:19 AM

To SOTF/SOTF/SFGOV@SFGOV
cc Kimo@webnetic.net
bcc
Subject BOS/COB Response: #08022_Kimo Crossman vs COB

This e-mail is the Department's response to the above titled complaint.

The Department is not contesting that the Task Force has jurisdiction over this matter. However, the complaint is without merit.

Personal information such as the home and e-mail addresses and telephone number were redacted pursuant to Cal. Gov. Code Section 6250, 6254 (c), 6254 (k), Cal. Constitution, Article I, Section 1, and Administrative Code Section 67.1 (g).



kimo <kimo@webnetic.net>
Sent by:
kimocrossman@gmail.com

05/28/2008 12:58 PM

Please respond to
kimo@webnetic.net

To "Erica Craven" <elc@lrolaw.com>, "Harrison Sheppard" <hjslaw@jps.net>, SOTF <sotf@sfgov.org>, "Kristin Chu" <kristin@chu.com>, "Richard A. Knee"

cc

bcc

Subject #08022 home phone number or home address complaints

SOTF Clerk, please add this to the file for Complaint 08022

----- Forwarded message -----

From: **Matt Dorsey** <Matt.Dorsey@sfgov.org>

Date: Mon, Nov 26, 2007 at 5:31 PM

Subject: Re: Immediate Disclosure Request - home phone number or home address complaints

To: kimo@webnetic.net

Kimo,

You have asked for "correspondence for all complaints filed with the city from 2005, 2006, 2007 from people who have complained that the city violated their general expectation of privacy because their home address or home phone number was revealed by the city."

Following a search for records responsive to your request, I have identified none.

Best,
MATT DORSEY

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

(415) 554-4662 Direct
(415) 554-4700 Reception
(415) 554-4715 Facsimile
(415) 554-6770 TTY

<http://www.sfgov.org/cityattorney/>

"Kimo
Crossman" <
kimo@webnetic.net>

11/21/2007 04:39

To "Matt Dorsey" <Matt.Dorsey@sfgov.org>, "Cityattorney" <CityAttorney@sfgov.org>
cc "Alexis Thompson" <Alexis.Thompson@sfgov.org>, "Amanda Witherell" <amanda@sfbg.com>, "James Chaffee" <chaffeej@pacbell.net>, <Dougcoms@aol.com>, "Erica Craven" <elc@lrolaw.com>, "Allen Grossman" <grossman356@mac.com>, "Harrison Sheppard" <hjslaw@jps.net>, <

PM

home@prosf.org, <info@whatsrightwithlawyers.com>, "Joe Lynn" <joelynn114@hotmail.com>, "Peter Warfield" <libraryusers2004@yahoo.com>, "Marc Salomon" <marc@cybre.net>, "Oliver Luby" <oliverlear@yahoo.com>, "Paul Zarefsky" <Paul.Zarefsky@sfgov.org>, <Pmonette-shaw@earthlink.net>, <rak0408@earthlink.net>, "Sue Cauthen" <SCau1321@aol.com>, "Bruce Wolfe MSW" <sotf@brucewolfe.net>, "SOTF" <sotf@sfgov.org>, "Steve Jones" <Steve@sfbq.com>, "Wayne Lanier" <w.lanier@pacbell.net>

Subje Immediate Disclosure Request - home phone number or home address complaints
ct

Immediate Disclosure Request

To City Attorney

Please provide correspondence for all complaints filed with the city from 2005, 2006, 2007 from people who have complained that the city violated their general expectation of privacy because their home address or home phone number was revealed by the city.

Please email to me this information on a daily incremental basis and in its original format. If it exists as paper only then please provide in a scanned PDF format.



"Kimo Crossman"
<kimo@webnetic.net>
05/29/2008 06:13 PM

To "SOTF" <sotf@sfgov.org>
cc
bcc
Subject: submittal for #08022 Complaint

Please include the below discussion for complaint #08022

Feedback I've collected from Calaware and CFAC counsel on previous questions about this is below:

Please note that if these addresses can be found by the names of people (which can't be redacted) in the phone book or the internet or they are addresses printed in the newspaper then I am going to be surprised at the redactions. I would also ask that addresses be minimally redacted in the same way police reports list the block and street of crimes "18xx Market street"

Calaware's opinion on redactions:

The variety of exemptions in the CPRA for home phone/address information for particular classes of individuals in particular kinds of records creates the strong implication that aside from those situations there is no inherent confidentiality or expectation of privacy. If home phone and address information were categorically exempt as a matter of privacy of other policy, there would be no need to codify protection in these special instances.

Many agencies might argue a public interest exemption under Section 6255, but that balancing exercise has been abrogated in the SF Sunshine Ordinance. The only basis that I can see for re-introducing the balancing test would be under Evidence Code Section 1040, the privilege for official information received in confidence, but it would be the department's burden affirmatively to show that the information had really been received on condition that it would not be disclosed. If that fact were shown, then the question would be what the library asserts as the public interest in nondisclosure, and whether that interest outweighs the public interest in disclosure.

Terry Francke
Californians Aware

Here is some analysis on personal email addresses and personal emails of someone performing city business (is there a reasonable expectation of privacy when someone contacts their government for a standard request and makes no effort to obscure personal info) I know there is the unpublished San Diego reader case about email addresses

Mr. Crossman,

Holme Roberts & Owen LLP is general counsel for the California First Amendment Coalition and responds to CFAC action line inquiries. In responding to these inquiries, we can give general information regarding open government and speech issues, but cannot provide specific legal advice or representation.

At least one court, *Holman v. Superior Court of San Diego County*, 31 Med. L. Rptr. 1993 (2003), determined that there is no absolute privilege exempting private identifying information such as email addresses and cellular and land line telephone numbers. The court determined, however, that such information could be exempted from disclosure under the California Public Records Act ("CPRA") if it is found that the public interest in nondisclosure outweighs the public interest in disclosure -- the balancing analysis found in section 6255 of the CPRA. It appears, therefore, that disclosure of such identifiable information will depend on the facts of each particular case. (As we know 6255 cannot be applied under the San Francisco Sunshine Ordinance -kimo).

In the *Holman* case, a media entity sought disclosure of email records containing email addresses, and cellular and landline telephone records of an employee that had recently been hired and who was allegedly connected with an entity with whom the agency was engaged in a controversial project. The court of appeals first determined that there was "no absolute privilege exempting private identifying information from disclosure" under section 6254, subdivision (k), which exempts from disclosure any information that is exempt pursuant to state or federal law. The court went on to state, however, that personal information protected by California's constitutionally guaranteed right of privacy can be exempted from CPRA disclosure under the balancing test set forth in section 6255 -- the "catch-all" provision.

With respect to the "catch-all" analysis on email addresses, the court weighed the interest furthered by disclosure (i.e., the activities of a person hired as a staff member of the agency for which she may have had no prior experience, and who was allegedly connected to an entity with whom the agency was then engaged in a controversial project) against the interests furthered by nondisclosure (i.e., the chilling effect associated with revealing email addresses of those the employee dealt with), and determined that the public interest served by not disclosing the email information does not clearly outweigh the public interest served by disclosure.

Similarly, with respect to telephone numbers, the court determined that under the facts of this case, the parties who called or were called by the employee in her governmental capacity had a correspondingly diminished interest in retaining the privacy of those contacts, and the limited scope of the disclosure here -- the telephone numbers of those contacting a specific governmental employee for a limited period of time -- will have a de minimus chilling impact on future communications. Because the disclosure here sought "appears necessary (or even indispensable) to furthering the particularized governmental accountability concerns," the reasons supporting nondisclosure, the court concluded, do not clearly outweigh the substantial public interest in ensuring governmental accountability. The court exempted from

disclosure the land line phone records only because the bills reflecting the employee's calls were not limited to the employee's land line calls but included calls placed by others who used that same land line.

I hope you find this information helpful.

Isela Castaneda
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Some of the law cited by Clerk

Clerk of the Board/Mr. Darby

You have not processed these redactions in good faith.

This matter would have been easy for the Clerk of the Board to assert independence from the City Attorney I am sorry to see this choice by your office. You have not addressed any of the writings I have provided that state that an explicit exemption is required to redact home address info. Please do so. Privacy must be balanced with allowing the observation of government and public interest in disclosure both of which are relevant here.

One has to ask, what about Tree Permits or Assessor records, are they going to be redacted too? If we take the alleged right to privacy to the full extreme why aren't you redacting the names as well?

Unless these search warrants were filed under seal - this information is public record.

6250 is a broad statement which happens to mention privacy - it does not specifically discuss address redactions

6254 (c) discusses withholding complete files like personnel and medical matters - this search warrant is not that and it was widely reported in the press.

6254 (k) is for evidence code privilege for confidential informers - not relevant here.

6254.21 is for posting information online - I did not request that this information be posted online by your office and you have not done so.

6255 cannot be invoked under Sunshine 67.21 G

California Constitution, Article I, Section 1. - broad statement which mentions privacy - it does not specifically discuss address redactions.
67.21 g) Neither the City nor any office, employee, or agent thereof may assert California Public Records Act Section 6255 or any similar provision as the basis for withholding any documents or information requested under this ordinance.

6250. In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

6254 (c)

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

6254

(k) 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.

6254.21. (a) No state or local agency shall post the home address or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of that individual.

(b) No person shall knowingly post the home address or telephone number of any elected or appointed official, or of the official's residing spouse or child on the Internet knowing that person is an elected or appointed official and intending to cause imminent great bodily harm that is likely to occur or threatening to cause imminent great bodily harm to that individual. A violation of this subdivision is a misdemeanor. A violation of this subdivision that leads to the bodily injury of the official, or his or her residing spouse or child, is a misdemeanor or a felony.

(c) (1) No person, business, or association shall publicly post or publicly display on the Internet the home address or telephone number of any elected or appointed official if that official has made a written demand of that person, business, or association to not disclose his or her home address or telephone number. A written

demand made under this paragraph by a state constitutional officer, a mayor, or a Member of the Legislature, a city council, or a board of supervisors shall include a statement describing a threat or fear for the safety of that official or of any person residing at the official's home address. A written demand made under this paragraph by an elected official shall be effective for four years, regardless of whether or not the official's term has expired prior to the end of the four-year period. For this purpose, "publicly post" or "publicly display" means to intentionally communicate or otherwise make available to the general public.

(2) An official whose home address or telephone number is made public as a result of a violation of paragraph (1) may bring an action seeking injunctive or declarative relief in any court of competent jurisdiction. If a jury or court finds that a violation has occurred, it may grant injunctive or declarative relief and shall award the official court costs and reasonable attorney's fees.

(d) (1) No person, business, or association shall solicit, sell, or trade on the Internet the home address or telephone number of an elected or appointed official with the intent to cause imminent great bodily harm to the official or to any person residing at the official's home address.

(2) Notwithstanding any other provision of law, an official whose home address or telephone number is solicited, sold, or traded in violation of paragraph (1) may bring an action in any court of competent jurisdiction. If a jury or court finds that a violation has occurred, it shall award damages to that official in an amount up to a maximum of three times the actual damages but in no case less than four thousand dollars (\$4,000).

(e) An interactive computer service or access software provider, as defined in Section 230(f) of Title 47 of the United States Code, shall not be liable under this section unless the service or provider intends to abet or cause imminent great bodily harm that is likely to occur or threatens to cause imminent great bodily harm to an elected or appointed official.

(f) For purposes of this section, "elected or appointed official" includes, but is not limited to, all of the following:

- (1) State constitutional officers.
- (2) Members of the Legislature.
- (3) Judges and court commissioners.
- (4) District attorneys.
- (5) Public defenders.
- (6) Members of a city council.
- (7) Members of a board of supervisors.
- (8) Appointees of the Governor.
- (9) Appointees of the Legislature.

- (10) Mayors.
- (11) City attorneys.
- (12) Police chiefs and sheriffs.
- (13) A public safety official as defined in Section 6254.24.
- (14) State administrative law judges.
- (15) Federal judges and federal defenders.
- (16) Members of the United States Congress and appointees of the President.

(g) Nothing in this section is intended to preclude punishment instead under Sections 69, 76, or 422 of the Penal Code, or any other provision of law.

6255. (a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

(b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.

67.1 Findings (g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process. (Added by Ord. 265-93, App. 8/18/93; amended by

Please provide balancing tests applied and specific facts for each redaction.

From: Burke, Thomas [mailto:THOMASBURKE@dwt.com]

Sent: Thursday, May 29, 2008 2:52 PM

To: Kimo Crossman; Richard Knee; CalAware_Francke Terry; SPJNC_FOIC_Craven Erica; SPJNC_FOIC_Brugmann Bruce; SPJNC_FOIC_Keaton Diane; CFAC_Scheer Peter; SPJNC_FOIC_McIntosh Andrew; SPJNC_FOIC_Olson Sarah; SPJNC_FOIC_Peele Thomas; SPJNC_FOIC_Scheck Justin; SPJNC_FOIC_Stoll Michael; SPJNC_FOIC_Taborn Tricia; SPJNC_FOIC_Witherell Amanda; SPJNC_Jue Linda; SPJNC_FOIC_Sussman Peter

Subject: RE: SF supes clerk orders personal-info redaction -- addenda

Note that under the CPRA however, which would control here -- rather than FOIA, which is federal law -- there are California appellate decisions to the contrary, where consumer complaints to the government have been shielded from public inspection.

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Bio: www.dwt.com/lawdir/attorneys/BurkeThomas.cfm

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Washington, D.C.

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

Sent: Thursday, May 29, 2008 2:40 PM

To: 'Richard Knee'; 'CalAware_Francke Terry'; Burke, Thomas; 'SPJNC_FOIC_Craven Erica'; 'SPJNC_FOIC_Brugmann Bruce'; 'SPJNC_FOIC_Keaton Diane'; 'CFAC_Scheer Peter'; 'SPJNC_FOIC_McIntosh Andrew'; 'SPJNC_FOIC_Olson Sarah'; 'SPJNC_FOIC_Peele Thomas'; 'SPJNC_FOIC_Scheck Justin'; 'SPJNC_FOIC_Stoll Michael'; 'SPJNC_FOIC_Taborn Tricia'; 'SPJNC_FOIC_Witherell Amanda'; 'SPJNC_Jue Linda'; 'SPJNC_FOIC_Sussman Peter'

Subject: RE: SF supes clerk orders personal-info redaction -- addenda

This may be helpful - attached

2007 FOIA case against DHS/FEMA required disclosure of the names and addresses of people who received Hurricane assistance.

(2) given the substantial public interest involved, FEMA failed to establish that disclosure of the addresses of the households that received Individuals and Households Program (IHP) aid “would constitute a clearly unwarranted invasion of personal privacy” within meaning of FOIA exemption;”

3) FEMA's disclosure of the names of IHP aid recipients “would constitute a clearly unwarranted invasion” of those individuals' personal privacy; and

(4) FEMA had to disclose the addresses of National Flood Insurance Program (NFIP) claimants.

From: Richard Knee [mailto:rak0408@earthlink.net]

Sent: Wednesday, May 28, 2008 5:24 PM

To: CalAware_Francke Terry; SPJNC_FOIC_Burke Tom; SPJNC_FOIC_Craven Erica; SPJNC_FOIC_Brugmann Bruce; SPJNC_FOIC_Crossman Kimo; SPJNC_FOIC_Keaton Diane; CFAC_Scheer Peter; SPJNC_FOIC_McIntosh Andrew; SPJNC_FOIC_Olson Sarah; SPJNC_FOIC_Peele Thomas; SPJNC_FOIC_Scheck Justin; SPJNC_FOIC_Stoll Michael; SPJNC_FOIC_Taborn Tricia; SPJNC_FOIC_Witherell Amanda; SPJNC_Jue Linda; SPJNC_FOIC_Sussman Peter

Subject: SF supes clerk orders personal-info redaction -- addenda

I've received some additional input on this.

From Erica Craven:

This new policy is contrary to decades of precedent where this information was not redacted from the Board of Supervisor's correspondence file which is open to public inspection.

This new policy would apply to release of elected officials' information as well as all personal contract regarding folks who petition or complain to the government.

Finally, this new policy will be subject to a hearing before the Sunshine Ordinance Task Force at its next meeting if anyone is interested in attending to testify.

From Kimo Crossman:

I would also point out that invoking 6254.21 (a) about posting home address info online one can surmise that if it is ***not*** posted online that information is disclosable. Also if the Clerk is so serious about redacting Personal Information for people who I believe has no expectation of privacy when they contact their government – (not whistleblowers) then why aren't they redacting the names of the citizens as well?

It's a ridiculous policy – attached is the document from Elections department just provided to me which has all Address, phone and email of anyone running for Board of Supervisor – these generally appear to be home addresses and direct email addresses and phones – is this now redacted? How could the Ed Jew case be reported without similar information?

Terry Francke has already opined that being that CPRA does has specific provisions in which personal information should be withheld that lacking that the balancing test of the public's right to know over general expectation of privacy must be applied on a case by case basis.

The number of documents that would require redaction under the Clerk's policy is staggering. This is a change to policy from decades. Yet when I asked the City Attorney if they have every received a complaint or lawsuit over disclosure of info they said they had not.

There are many easy solution to this issue – indicate that a work or po box email address can be provided on forms, put a notice on the form that it is a public record,

There has been scant evidence that addresses in public records which often are just as easily available in whitepages.com and paper phone books has resulted in massive identity theft. There are already laws on the books for harassment and cyberbullying if someone is trying to get ahold of you, keeping the info off of a letter you sent to the Clerk of the Board with stationary that has your home address on it seems an unlikely method to find someone to harass.



"Kimo Crossman"
<kimo@webnetic.net>
06/02/2008 09:17 PM

To "SOTF" <sotf@sfgov.org>
cc
bcc
Subject submittal for #08022 Complaint

Some more useful privacy citations in other states and at a federal level.

Privacy

CALIFORNIA: 1998 Cal. Att'y Gen. Ops. 98-901: "Claims for senior citizens' exemptions from assessment of a parcel tax levied by a school district are subject to inspection by members of the general public. The public and the media have a legitimate need to know whether government officials are performing their duties in a responsible manner. Here, property owners have a significant interest in knowing whether other property owners are complying with the law and whether public officials are fairly performing their duties in granting exemptions from the tax. On the other hand, if the information in question is not disclosed, the rights of privacy of the senior citizens in the district would be protected. Arguably, they would not be subject to unwanted solicitations directed to them due solely to their having surpassed the age of 65. Such speculation, however, is not basis for denying disclosure under the terms of section 6255."

FEDERAL: Arieff v. Dep't of the Navy, 712 F. 2d 1462 (D.C.C. 1983): Production of documents, not secondary effects of release, must be the source of invasion of privacy.

FEDERAL: Nat'l Ass'n of Retired Federal Employees v. Homer, 633 F. Supp. 1241 (D.D.C. 1986): "... this circuit has recognized only a slight privacy interest in a person's name and address... Unless the release of names and addresses, standing alone, will embarrass the individuals involved, this circuit has determined that the information is entitled to little protection."

FEDERAL: Pearson v. Edgar, 965 F.Supp. 1104 (N.D.Ill. 1997): "... (h)omeowners must continue to sift through mass mailings and answer numerous telephone calls. These intrusions and interruptions are generally viewed simply as a cost of life in modern society. Homeowners who are not interested in such solicitations routinely either discard these materials or terminate the telephone calls or door-to-door contacts. The Supreme Court has observed that the short, though regular journey from mail box to trash can... is an acceptable burden, at least so far as the Constitution is concerned." (Citing Bolger v. Youngs Drug Products Corp., 463 U.S. 60).

FEDERAL: Kilrov v. Nat'l Labor Relations Bd., 633 F.Supp. 136 (S.D. Ohio 1985): "An invasion of privacy occurs when disclosure would subject a person to embarrassment, harassment, physical danger, disgrace, or loss of employment or friends."

GEORGIA: Pensyl v. Peach County, Ga. 314 S.E. 2d 434 (Ga. 1984): "The tax officials testified that due to the personal privacy concerns of homeowners, they changed their policy of making such records available shortly before this taxpayer requested them. The taxpayer responds that the policy change occurred when numerous taxpayers were challenging their 1983 (tax) assessments." (At 436).

ILLINOIS: Lieber v. Southern Illinois University, 680 N.E. 2d 374 (Ill. 1997): "If... personal information embraced even basic identification, the public would have no right to learn the names of officials they had placed in office, and a person could not confirm that the doctor who was about to perform surgery on him was actually licensed to practice medicine. We do not believe the General Assembly intended such absurd results. Where the legislature intended to exempt a person's identity from disclosure, it did so explicitly."

ILLINOIS: Emery v. Kimball Hill Inc., 445 N.E. 2d 59 (Ill.App. 1983): "Fair reports of what is shown on public records may be circulated freely and without liability. Similarly, it is axiomatic that truth is a defense to a defamation action." (At 61).

KENTUCKY: 1949 Ky. Att'y Gen. Ops. 89-50: "Information regarding the location of real property, its description, ownership history through time, and valuation history, as well as information concerning the description and valuation of tangible personal property such as vehicles, watercraft, and mobile homes, are the principal types of information recorded upon the cards in question. Such information, in being factual information about property, rather than a person, is not of a 'personal nature.' This is particularly so where the information (e.g., ownership, location, etc.) regarding that property is, in general, subject to recognized public recordation and routine public perusal - for example, in a deed book. Much of the property description information contained upon the cards in question is typically readily observable such as from a public street (number of stories, type of construction, etc.). Accordingly, information of such character contained upon the cards in question must be made available for inspection without a court order. Inspection of such information cannot be properly denied pursuant to KRS 61.878 (1) (a)."

LOUISIANA: Webb v. City of Shreveport, 371 So. 2d 316 (La.App. 1979): "A person's employment, where he lives, and where he works are exposures which we all must suffer. We have no reasonable expectation of privacy as to our identity or as to where we live or work." (At 319).

MASSACHUSETTS: Attorney General v. Collector of Lynn, 385 N.E. 2d 505 (1979): "Next, the collectors argue that the lists of tax delinquents are exempted from public inspection...because disclosure would constitute an invasion of personal privacy. Public disclosure of the lists of tax delinquents does involve some invasion of personal privacy. Publication of one's name on such a list would certainly result in personal embarrassment.... However, we cannot say that disclosure publicized 'intimate details' of a 'highly personal' nature. The records disclose only whether an owner is meeting his public responsibilities. Finally, any invasion of privacy resulting from the disclosure of the records of tax delinquents is also outweighed by the public right to know...whether public employees are diligently collecting delinquent accounts. The public has an interest in knowing whether public servants are carrying out their duties in an efficient and law-abiding manner."

MASSACHUSETTS: Poltie v. School Committee of Braintree, 482 N.E. 2d 813 (Mass. 1985): "Names and addresses are not 'intimate details of highly personal nature'." (At 817).

MICHIGAN: Tobin v. Michigan Civil Service Commission, 331 N.W. 2d 184 (Mich. 1982): "Names and addresses are not ordinarily personal, intimate, or embarrassing pieces of information. The supposed right to keep such information secret is at best riddled with exceptions. Certainly the expectation that the person...will be subject to unsolicited messages...is insufficient to create an actionable invasion of privacy, since the mailing of unsolicited messages not amounting to harassment is not actionable. We find no violation of the common-law right of privacy in the contemplated release of names and addresses...."

NEW MEXICO: McNutt v. New Mexico State Tribune Co., 538 P.2d 804 (1975): "The addresses of most persons appear in many public records: ... property assessment rolls... etc., all of which are open to public inspection. We, therefore, hold that an individual's home address is a public fact and that its mere publication, without more, cannot be viewed as an invasion of privacy." (At 808).

NEW YORK: Lamont v. Commissioner of Motor Vehicles, 269 F. Supp. 880 (S.D. N.Y. 1967): Plaintiff sued in Federal Court for \$10,000, claiming he was compelled to register his car with the state and then the state made his name and address available as a public record. He claimed "...considerable annoyance, inconvenience and damage to the plaintiff and other registrants by reason of the large volume of advertising and crank mail and other solicitations to which they are subjected" and claimed the state's action was "... in violation of the right of privacy and constitutes deprivation of their liberty and property under the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution." The court ruled: "The mail box, however noxious its advertising contents often seem to judges as well as other people, is hardly the enclave that requires constitutional defense to protect 'the privacies of life'. The short, though regular, journey from mailbox to trash can in an acceptable burden, at least so far as the constitution is concerned. The information sold by the Commissioner is not vital or intimate. It is, moreover, in the category of 'public records,' available to anyone on demand. ... (P)laintiff proposes to stretch the constitutional dimensions of 'privacy' far beyond any reasonably foreseeable limits the courts ought to enforce." (At 883-884)

NEW YORK: Szakszay v. Buelow, 436 N.Y.S. 2d 558 (1981): "Respondents contend that providing petitioner with the (assessment roll) tapes amounts to an 'unwarranted invasion of personal privacy' Respondents allege, as well, that a further invasion of privacy will result because much of the land in Cattaraugus County is owned by non-residents... and that this information would be useful to someone interested in vandalizing or burglarizing the real property involved. In view of the history of public access to assessment records, and the continued availability of such records to public inspection, whatever invasion of privacy may result by providing copies of... tapes to petitioner would appear to be permissible rather than 'unwarranted'. It appears that petitioner could obtain the information he seeks if he wanted to spend the time to go through the records manually and copy the necessary information."

OHIO: Shibley v. Time, Inc., 341 N.E. 2d 337 (1975): "The right of privacy does not extend to the mailbox and therefore it is constitutionally permissible to sell... lists to direct mail advertisers.... (T)he practice complained of here does not constitute an invasion of privacy even if appellants' unsupported assertion that this amounts to the sale of personality profiles is true because these profiles are only used to determine what type of advertisement is to be sent." (At 339 and 340).

OREGON: Kotulski v. Mt. Hood Community College, 660 P.2d 1083 (Or.App. 1983): "We cannot say that one's address is information that 'normally would not be shared with strangers'. Addresses are commonly listed in telephone directories, printed on checks and provided to merchants."

PENNSYLVANIA: Westmoreland Cty. Bd. of Assessment Appeals v. Montgomery, 321 A.2d 660 (Pa. Cmwh. 1974): "We simply cannot conclude that the information contained in the building record if made public, would operate to the prejudice or impairment of a person's reputation or personal security, as claimed by the Board."

PENNSYLVANIA: City of Philadelphia v. Doe, 405 A.2d 1317 (Pa. Cmwlth. 1979): "It has never been deemed...an invasion of privacy to make public a citizen's tax records. We do hold...that embarrassment does not rise to the level of an invasion of that right...."

TEXAS: Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W. 2d 668 (Tex. 1976); Discusses "...the people's right to publicize information which is a matter of public record without fear of sanctions by the State. Once information is made a matter of public record, the protection accorded freedom of speech and press by the First Amendment may prohibit recovery for injuries caused by any further disclosure of and publicity given to such information...."

WASHINGTON: 1975 Wash. Att'y Gen. Ops. No. 15; Although the public records law prohibits officials from providing a "list of individuals" when such is intended for commercial usage, the law "does not prohibit access to raw data from which a person could construct his own list of individuals for commercial purposes." (At 7). Note: Conclusion repeated in 1983 Ops. No. 9. (At 6).

WEST VIRGINIA: Hechler v. Casey, 333 S.E. 2d 799 (W.Va. 1985): "The court is of the opinion that...an individual's name and residential address...are not 'personal' or 'private' facts but are public in nature in that they constitute information normally shared with strangers and are ascertainable by reference to many publicly obtainable books and records. Thus, disclosure of an individual's name and address would not result in an unreasonable invasion of privacy."

WISCONSIN: Wisc. Stat. Sec. 895.50 (2)(C): "(It) is not an invasion of privacy to communicate any information available to the public as a matter of public record."

ILLINOIS

Illinois court deems plumbers' names, addresses public record

The Illinois Department of Public Health must disclose the names and home addresses of licensed plumbers and apprentice plumbers in response to a state Freedom of Information Act request, a state appeals court has ruled.

The court rejected the department's claim that the information was protected by a privacy exemption to the state FOI law.

Justice Margaret O'Mara Frossard affirmed a decision by the Cook County Circuit Court that the department must provide the addresses to the Chicago Journeymen Plumbers Local 130. Names and addresses constitute basic identification information, she wrote, and cannot be exempted.

Although the state law, like the federal FOI Act, allows the exemption of personal information that would constitute a clearly unwarranted invasion of personal privacy, the appellate court ruled that names and addresses of individuals do not constitute "personal information." It quoted a 1996 Illinois Supreme Court decision that although names and addresses are "unquestionably personal in the sense that they are specific to particular persons," the statutory exemption means "more than simply that."

Frossard distinguished this ruling from another Illinois appellate court decision finding that names and addresses of scholarship winners could be denied because receipt of scholarship money is "personal" information, beyond mere identification.

(Chicago Journeymen Plumbers Local 130 v. Dep't of Health; requesters' attorney: Julian Schreiber, Chicago) — RD

public. Thus there is no liability for giving publicity to facts about the plaintiff's life that are matters of public record, such as the date of his birth, the fact of his marriage, his military record, the fact that he is admitted to the practice of medicine or is licensed to drive a taxicab

Similarly, there is no liability for giving further publicity to what the plaintiff himself leaves open to the public eye. Thus he normally cannot complain when his photograph is taken while he is walking down the public street and is published in the defendant's newspaper. Nor is his privacy invaded when the defendant gives publicity to a business or activity in which the plaintiff is engaged in dealing with the public.

RESTATEMENT, *supra*, at cmt. b.

There are other individuals who have not sought publicity or consented to it, but through their own conduct or otherwise have become a legitimate subject of public interest. . . . The same is true as to those who are . . . involved in judicial proceedings or other events that attract public attention. These persons are regarded as properly subject to the public interest

Id. at cmt. f.

No Washington case has held that public employees' names are private and subject to the personal privacy exemption. Washington's public records act contains no blanket exemption for names, as it does for addresses. RCW 42.17.310(1)(u) exempts from disclosure "[t]he residential addresses or residential telephone numbers of employees . . . of a public agency." Generally, however, absent such a statute so providing, lists of names and addresses are not private. See Phillip E. Hassman, Annotation, *Publication of Address as Well as Name of Person as Invasion of Privacy*, 84 A.L.R.2d 1159 (1978); Andrea G. Nadel, Annotation, *What Constitutes Personal Matters Exempt From Disclosure by Invasion of Privacy Exemption Under State Freedom of Information Act*, 26 A.L.R.4th 666 (1983).

AMERICAN
LAW
REVIEW

Certain federal cases have held that the privacy exemption of the Freedom of Information Act (FOIA), 5 U.S.C.

344 King County v. Sheehan Nov. 2002
114 Wn. App. 325

§ 552(b)(6) prevents disclosure of names and addresses when coupled with employee job classification, and salary and benefits information. *Painting Indus. of Haw. Mkt. Recovery Fund v. United States Dep't of Air Force*, 26 F.3d 1479, 1483 (9th Cir. 1994); *Painting & Drywall Work Pres. Fund, Inc. v. Dep't of Housing & Urban Dev.*, 936 F.2d 1300, 1303 (D.C. Cir. 1991). And, in the law enforcement context, at least one federal court has held that the right to privacy for officers involved in a specific investigation outweighed the public interest in disclosure of their names. *Nix v. United States*, 572 F.2d 998, 1003, 1006 (4th Cir. 1978) (holding that names of FBI agents who investigated alleged beating of prisoner by prison guards and name of assistant United States attorney who made the decision that the alleged civil rights violation lacked criminal prosecutive merit need not be disclosed to prisoner under FOIA; pointing out that FOIA is not designed to supplement the rules of civil discovery but rather to inform the public about the action of governmental agencies). In interpreting Washington's public disclosure act, our courts may look to the federal courts and their interpretation of FOIA. *Bonamy v. City of Seattle*, 92 Wn. App. 403, 410, 960 P.2d 447 (1998). However, it is important to bear in mind that the "state act is more severe than the federal act in many areas." *P4WS II*, 125 Wn.2d at 266 (quoting *Hearst*, 90 Wn.2d at 129). Most significantly, unlike federal cases interpreting FOIA, "the use of a test that balances the individual's privacy interest against the interest of the public in disclosure is not permitted."



SOTF/SOTF/SFGOV
06/16/2008 11:31 AM

To kimo@webnetic.net, Angela Calvillo/BOS/SFGOV@SFGOV,
Alexis Thompson/CTYATT@CTYATT, Paula
Jesson/CTYATT@CTYATT, Kevin
cc
bcc Kristin@Chu.com; Ernest.llorente@sfgov.org;
elc@lrolaw.com
Subject Notice: Continuation of all SOTF complaints filed by Kimo
Crossman

This is to inform you that per the request of the complainant Kimo Crossman, and pursuant to Section B(8) or the SOTF Complaint Procedures, the following complaints are continued to the July 22, 2008, meeting of the Sunshine Ordinance Task Force. Your attendance is not required at next week's (6-24-08) meeting as previously scheduled.

#08022_Kimo Crossman v Clerk of the Board, SOTF Administrator
#08025_Kimo Crossman v City Attorney's Office
#08026_Kimo Crossman v City Attorney's Office
#08027_Kimo Crossman v Office of Criminal Justice
#08028_Kimo Crossman v City Attorney's Office

Frank Darby, Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
SOTF@SFGov.org
OFC: (415) 554-7724
FAX: (415) 554-7854

Complete a SOTF Customer Satisfaction Survey by clicking the link below.
http://www.sfgov.org/site/sunshine_form.asp?id=34307

----- Forwarded by SOTF/SOTF/SFGOV on 06/16/2008 11:05 AM -----

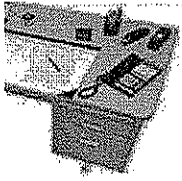


"Kimo Crossman"
<kimo@webnetic.net>
06/15/2008 10:16 PM


To "SOTF" <sotf@sfgov.org>
cc "Allen Grossman" <grossman356@mac.com>, "Kristin
Murphy Chu" <kristin@chu.com>
Subject Continuation of all SOTF complaints filed by Kimo Crossman

SOTF Admin

Please put on hold or continuation all pending SOTF Complaints – I have some other matters and cannot give my full attention to them. I agree to waive the 45 day rule.



Frank Darby/BOS/SFGOV
06/26/2008 11:59 AM

To SOTF/SOTF/SFGOV@SFGOV
cc
bcc
Subject July 22, 2008 Meeting: #08022_Kimo Crossman vs COB 

To Honorable Members of the SOTF:

This e-mail is in response to your e-mail regarding the special meeting to be held on July 8, 2008.

With regards to the above titled complaint, I request that this matter be heard on the originally scheduled hearing date of July 22, 2008. I am the most knowledgeable person who can speak to the matter and will not be available for the July 8, 2008, meeting.

Frank Darby, Jr.
Records & Information Manager
Office of the Clerk of the Board of Supervisors

Complete a Board of Supervisors Customer Satisfaction form by clicking the link below.
http://www.sfgov.org/site/bdsupvrs_form.asp?id=18548



kimo <kimo@webnetic.net>
Sent by:
kimocrossman@gmail.com

07/09/2008 10:30 PM

Please respond to
kimo@webnetic.net

To SOTF <sotf@sfgov.org>, "Kimo Crossman"
<kimo@webnetic.net>
cc
bcc
Subject submittal for #08030 & 08022 Complaints

SOTF Clerk please include this as a submittal for #08030 & 08022 Complaints

----- Forwarded message -----

From: **Matt Dorsey** <Matt.Dorsey@sfgov.org>
Date: Mon, Nov 26, 2007 at 5:31 PM
Subject: Re: Immediate Disclosure Request - home phone number or home address complaints
To: kimo@webnetic.net

Kimo,

You have asked for "correspondence for all complaints filed with the city from 2005, 2006, 2007 from people who have complained that the city violated their general expectation of privacy because their home address or home phone number was revealed by the city."

Following a search for records responsive to your request, I have identified none.

Best,
MATT DORSEY

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

(415) 554-4662 Direct
(415) 554-4700 Reception
(415) 554-4715 Facsimile
(415) 554-6770 TTY

<http://www.sfgov.org/cityattorney/>

"Kimo
Crossman" <
kimo@webnetic.net>

11/21/2007 04:39

To "Matt Dorsey" <Matt.Dorsey@sfgov.org>, "Cityattorney" <CityAttorney@sfgov.org>
cc "Alexis Thompson" <Alexis.Thompson@sfgov.org>, "Amanda Witherell" <amanda@sfbg.com>, "James Chaffee" <chaffeej@pacbell.net>, <Dougcoms@aol.com>, "Erica Craven" <elc@lrolaw.com>, "Allen Grossman" <grossman356@mac.com>, "Harrison Sheppard" <hjlaw@ips.net>, <home@prosf.org>, <info@whatsrightwithlawyers.com>, "Joe Lynn" <joelynn114@hotmail.com>, "Peter Warfield" <

PM

libraryusers2004@yahoo.com>, "Marc Salomon" <marc@cybre.net>, "Oliver Luby" <oliverlear@yahoo.com>, "Paul Zarefsky" <Paul.Zarefsky@sfgov.org>, <Pmonette-shaw@earthlink.net>, <rak0408@earthlink.net>, "Sue Cauthen" <SCau1321@aol.com>, "Bruce Wolfe MSW" <sotf@brucewolfe.net>, "SOTF" <sotf@sfgov.org>, "Steve Jones" <Steve@sfbg.com>, "Wayne Lanier" <w_lanier@pacbell.net>

Subject: Immediate Disclosure Request - home phone number or home address complaints

Immediate Disclosure Request

To City Attorney

Please provide correspondence for all complaints filed with the city from 2005, 2006, 2007 from people who have complained that the city violated their general expectation of privacy because their home address or home phone number was revealed by the city.

Please email to me this information on a daily incremental basis and in its original format. If it exists as paper only then please provide in a scanned PDF format.



kimo <kimo@webnetic.net>
Sent by:
kimocrossman@gmail.com

To SOTF <sotf@sfgov.org>

cc

bcc

07/09/2008 10:31 PM

Please respond to
kimo@webnetic.net

Subject: submittal for #08030 & 08022 Complaints

SOTF Clerk please include this as a submittal for #08030 & 08022 Complaints

----- Forwarded message -----

From: **Matt Dorsey** <Matt.Dorsey@sfgov.org>

Date: Wed, Nov 21, 2007 at 1:19 PM

Subject: Re: Immediate Disclosure Request - email privacy complaints

To: kimo@webnetic.net

Cc: Alexis Thompson <Alexis.Thompson@sfgov.org>, Amanda Witherell <amanda@sfbg.com>, James Chaffee <chaffeej@pacbell.net>, Dougcoms@aol.com, Erica Craven <elc@lrolaw.com>, Allen Grossman <grossman356@mac.com>, Harrison Sheppard <hjslaw@jps.net>, home@prosf.org, info@whatsrightwithlawyers.com, Joe Lynn <joelynn114@hotmail.com>, Peter Warfield <libraryusers2004@yahoo.com>, Marc Salomon <marc@cybre.net>, Oliver Luby <oliverlear@yahoo.com>, Paul Zarefsky <Paul.Zarefsky@sfgov.org>, Pmonette-shaw@earthlink.net, rak0408@earthlink.net, Sue Cauthen <SCau1321@aol.com>, Bruce Wolfe MSW <sotf@brucewolfe.net>, SOTF <sotf@sfgov.org>, Steve Jones <Steve@sfbg.com>, Wayne Lanier <w_lanier@pacbell.net>

Kimo,

You have asked for "correspondence for all complaints filed with the city from 2005, 2006, 2007 from people who have complained that the city violated their general expectation of privacy because their email address was revealed by the city."

Following a search for records responsive to your request, I have identified none.

Thanks for your request, Kimo. Have a happy and safe holiday!

Best,
MATT DORSEY

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

(415) 554-4662 Direct
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(415) 554-6770 TTY

<http://www.sfgov.org/cityattorney/>

"Kimo
Crossman" <
kimo@webnetic.net>

11/21/2007 09:23

AM

To "Paul Zarefsky" <Paul.Zarefsky@sfgov.org>, "Matt Dorsey" <Matt.Dorsey@sfgov.org>, "Alexis Thompson" <Alexis.Thompson@sfgov.org>
cc "Allen Grossman" <grossman356@mac.com>, "Wayne Lanier" <w_lanier@pacbell.net>, "Peter Warfield" <libraryusers2004@yahoo.com>, "James Chaffee" <chaffeej@pacbell.net>, <home@prosf.org>, <Pmonette-shaw@earthlink.net>, "Oliver Luby" <oliverlear@yahoo.com>, "Joe Lynn" <joelynn114@hotmail.com>, "Marc Salomon" <marc@cybre.net>, <rak0408@earthlink.net>, <Dougcoms@aol.com>, "SOTF" <sotf@sfgov.org>, "Bruce Wolfe MSW" <sotf@brucewolfe.net>, "Amanda Witherell" <amanda@sfbq.com>, "Steve Jones" <Steve@sfbq.com>, <info@whatsrightwithlawyers.com>, "Harrison Sheppard" <hislaw@jps.net>, "Erica Craven" <elc@irolaw.com>, "Sue Cauthen" <SCau1321@aol.com>
Subject: Immediate Disclosure Request - email privacy complaints
ct

Immediate Disclosure Request

To City Attorney

Please provide correspondence for all complaints filed with the city from 2005, 2006, 2007 from people who have complained that the city violated their general expectation of privacy because their email address was revealed by the city.

Please email to me this information on a daily incremental basis and in its original format. If it exists as paper only then please provide in a scanned PDF format.

