

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

May 14, 2012

DATE THE DECISION ISSUED

April 4, 2012

*ALLEN GROSSMAN v. SCOTT MINTY, INFORMATION SYSTEMS ADMINISTRATOR,
CITY ATTORNEY'S OFFICE (CASE NO. 12008)*

*ALLEN GROSSMAN v. MARISA MORET, MANAGING ATTORNEY, CITY ATTORNEY'S
OFFICE (CASE NO. 12009)*

*ALLEN GROSSMAN v. SUSANA MARTINEZ, CHIEF FINANCIAL OFFICER, CITY
ATTORNEY'S OFFICE (CASE NO. 12010)*

FACTS OF THE CASE

Complainant Allen Grossman alleged that Scott Minty, Information Systems Administrator for the City Attorney's Office, Marisa Moret, Managing Attorney for the City Attorney's Office, and Susana Martinez, Chief Financial Officer for the City Attorney's Office, violated the Sunshine Ordinance and California Public Records Act ("CPRA") by failing to respond to his January 3, 2012 requests for public records regarding budgets for general fund departments, the City Attorney's Office's budgeted hours of legal services for general fund departments, historic number of legal service hours provided to the Sunshine Ordinance Task Force, and list of positions held for time periods ranging from 2008 through 2011.

COMPLAINT FILED

On January 18, 2012, Allen Grossman filed three separate complaints with the Sunshine Ordinance Task Force ("Task Force") alleging that Scott Minty, Marisa Moret, and Susana Martinez of the San Francisco City Attorney's Office each individually violated Sunshine Ordinance Section 67.21(b) and CPRA Sections 6253 (b) and (c) by failing to respond to his request for public records.

HEARING ON THE COMPLAINT

On April 4, 2012, Allen Grossman appeared before the Task Force and presented his three complaints during one hearing. Scott Minty, Marisa Moret, and Susana Martinez (collectively, "Respondents") did not appear at the hearing and no one appeared on their behalf.

On January 3, 2012, Mr. Grossman submitted three requests for public records directed individually to Mr. Minty, Ms. Moret, and Ms. Martinez. He requested all public records in Respondents' custody or control including memos, emails or other communications to or from Respondents or any other employees of the City Attorney's Office regarding: (1) budgets for general fund departments from July 1, 2008 through December 31, 2010; (2) baseline amounts allocated to general fund departments prior to June 30, 2009; (3) the City Attorney's Office's budgeted hours of legal services for general fund departments for fiscal years 2009 through 2011; (4) historic number of legal service hours provided to the Sunshine Ordinance Task Force; and (5) a list of positions with job descriptions held by Respondents from July 1, 2008 through December 31, 2011.

Mr. Grossman stated his intent was to receive personal responses from specific people who might have custody of the requested records. He further stated he did not receive any responses directly from Respondents.

On January 5, 2012, Jack Song, Public Information Officer for the City Attorney's Office, responded to Mr. Grossman in writing. Mr. Song acknowledged receipt of Mr. Grossman's January 3, 2012 public records request, provided the employment information requested, and indicated that the City Attorney's Office had no additional responsive budget documents as previously indicated to Mr. Grossman. He also provided Mr. Grossman with a copy of a responsive email that Mr. Grossman had submitted in a prior Sunshine complaint, and further wrote that the City Attorney's Office had previously provided responsive records to Mr. Grossman in response to multiple previous records requests.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force found that Sunshine Ordinance Section 67.21(a) defines a "custodian of public records" as "every person having custody of any public record or public information" as defined by the Sunshine Ordinance. Based on this definition and the fact that Mr. Grossman directed his public records request to specific individuals rather than the City Attorney's Office in general, the Task Force concluded that Mr. Minty, Ms. Moret, and Ms. Martinez are personally the custodians of the public records requested by Mr. Grossman, which included correspondence sent to or received by these specific individuals.

The Task Force further found that Sunshine Ordinance Section 67.21(b) requires that a "*custodian of a public record* shall, as soon as possible and within ten days 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." Based on this requirement, the Task Force concluded that Mr. Minty, Ms. Moret, and Ms. Martinez were personally required to respond to Mr. Grossman as the custodians of the requested records.

Based on the evidence presented, the Task Force additionally found that Mr. Grossman has not received responses from Mr. Minty, Ms. Moret, or Ms. Martinez.

DECISION AND ORDER OF DETERMINATION

The Task Force finds Scott Minty, Marisa Moret, and Susana Martinez of the City Attorney's Office in violation of Sunshine Ordinance Sections 67.21(b) for failure to personally respond to Mr. Grossman's January 3, 2012 public records requests as the persons with custody or control of the requested public records and 67.21(e) for failure to appear at the Task Force hearing on the complaints to explain the decision to withhold the requested records.

Scott Minty, Marisa Moret, and Susana Martinez shall individually and personally respond to Mr. Grossman's January 3, 2012 requests for public records and produce the requested records within five business days of the issuance of this Order, and shall appear before the Compliance and Amendments Committee on Tuesday, June 19, 2012 at 4:00 p.m. in Room 406 at City Hall. The Committee shall monitor compliance with this Order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on April 4, 2012, by the following vote: (Costa/Manneh)

Ayes: Costa, Knee, Manneh, Washburn, Johnson

Noes: West

Excused: Chan, Snyder, Wolfe

Absent: Cauthen



Hope Johnson, Chair
Sunshine Ordinance Task Force

cc: Allen Grossman, Complainant
Scott Minty, Information Systems Administrator, City Attorney's Office, Respondent
Marisa Moret, Managing Attorney, City Attorney's Office, Respondent
Susana Martinez, Chief Financial Officer, City Attorney's Office, Respondent
Jack Song, Public Information Officer, City Attorney's Office
Jerry Threet, Deputy City Attorney