

**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**

**ORDER OF DETERMINATION**

November 10, 2008

**DATE THE DECISION ISSUED**

October 28, 2008

*ALLEN GROSSMAN v. OFFICE OF THE CITY ATTORNEY (08039)*

**FACTS OF THE CASE**

On May 28, 2008, Allen Grossman submitted a public records request to Deputy City Attorney Rosa Sanchez for copies of all public records pertaining to a letter originally dated February 26, 2007, written by Deputy City Attorney Paul Zarefsky to the Task Force, including: 1) an exact copy of the Zarefsky letter in the form given to the Task Force member at the meeting; 2) memoranda, e-mails or other communications to, from or among Ms. Sanchez and/or any one or more Deputy City Attorneys or any other persons in the City Attorney's Office or the Task Force Administrator or any other person; and 3) drafts of the Zarefsky letter and all communications between Mr. Zarefsky and/or any other Deputy City Attorneys with respect to the drafts.

Allen Grossman stated that the City Attorney's Office responded to his request as follows: To category 1) by providing a copy of the Zarefsky letter. To category 2) by stating: "this office has records responsive to your request " for memoranda, e-mails or other communications to, from or among Ms. Sanchez and/or any one or more Deputy City Attorneys or any other persons in the City Attorney's Office or the Task Force Administrator or any other person "but declines to produce them based on the attorney work product doctrine". To category 3) by stating: "we have located a draft of the Zarefsky letter and decline to produce it based on the attorney work product doctrine" and there were no "communications between Mr. Zarefsky and and/or any other Deputy City Attorneys with respect to the drafts".

**COMPLAINT FILED**

On July 30, 2008, Allen Grossman filed a complaint online and alleged that the CAO violated Sections 67.21(b) of the Sunshine Ordinance and Section 6253(b) of the California Public Records Act ("CPRA") by its alleged failure to provide the requested documents

**HEARING ON THE COMPLAINT**

On October 28, 2008, Allen Grossman appeared before the Task force and stated that the requested draft documents and communications were subject to disclosure because, even if they were attorney work-product, they must be released under 67.24(b)(ii) and (b)(iii).

**ORDER OF DETERMINATION**

Respondent Virginia Dario Elizondo of the City Attorney's Office said the communications and drafts pertaining to the letter are protected attorney work-product because they are the thoughts, impressions and thoughts of attorneys and, therefore, are exempt from disclosure.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based on the testimony and evidence presented, the Task Force finds that communications and drafts pertaining to the letter issued by the City Attorney's Office are protected attorney work product and not subject to disclosure under section 67.24(b)(ii) because they were work-product materials when created and not subject to disclosure under section 67.24(b)(iii) because the drafts and communications did not reflect the final opinion or analysis of the City Attorney's office.

**DECISION AND ORDER OF DETERMINATION**

The Task Force after much extended discussion found that the work-product doctrine applied in this case and the withheld documents were exempt from disclosure

This Order of Determination was adopted by the Sunshine Ordinance Task Force on October 28, 2008, by the following vote: ( Goldman / Knoebber )

Ayes: Craven, Knee, Cauthen, Washburn, Knoebber, Chu, Chan, Goldman  
Noes: Johnson, Williams



Kristin Murphy Chu, Chair  
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney  
Allen Grossman, Complainant  
Virginia Dario Elizondo, Deputy City Attorney