

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

January 27, 2009

DATE THE DECISION ISSUED

January 6, 2009

KIMO CROSSMAN v. DEPARTMENT OF TELECOMMUNICATIONS AND INFORMATION SERVICES, SAN FRANCISCO GOVERNMENT TV, and CITY ATTORNEY'S OFFICE (08055)

FACTS OF THE CASE

On October 12, 2008, Kimo Crossman made an Immediate Disclosure Request ("IDR") to the San Francisco Department of Telecommunications and Information Services ("DTIS") generally and Barry Fraser and Jack Chin of DTIS requesting that DTIS e-mail to Mr. Crossman all active legislation, ordinances, procedures and motions which pertain to programming coverage by SFGTV including any goals, charters or objectives for 2008 to the present. Mr. Crossman also requested any budget information used to support these initiatives. On October 15, 2008, Barry Fraser, Telecommunications Policy Analyst of the Department of Technology responded to the IDR and stated the Department of Technology conducted a thorough search and found no records which met Mr. Crossman's request. Mr. Fraser stated that SFGTV has posted its programming policies on its website. On October 15, 2008, Kimo Crossman responded to Barry Fraser and stated that the response is only a partial response and that he expects a complete response to his original request. On October 17, 2008, Barry Fraser e-mailed to Kimo Crossman a spreadsheet in PDF format. On October 21, 2008, Mr. Crossman objected to the spreadsheet in PDF format and requested that it be provided in its native Excel format so that the formulas could be read. DTIS refused to provide the spreadsheet in its native Excel format. On October 22, 2008, Mr. Crossman appealed to DCA Paula Jesson in her capacity of Supervisor of Records for the release of the spreadsheet in its native Excel format. In response to Mr. Crossman's appeal, DCA Jesson stated that she would need more time, in addition to the 10 days provided in Sec. 67.21(d), before making a determination since there was additional information that she needed from DTIS and the person most familiar with the issues was out of the office for two weeks.

COMPLAINT FILED

On November 25, 2008, Mr. Crossman filed a complaint with the Sunshine Ordinance Task Force ("Task Force") and alleged that DTIS and SFGTV did not provide the spreadsheet in the original Excel format and further alleged that the Supervisor of Records did not act on the appeal in a timely fashion.

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On January 6, 2009, Complainant Mr. Crossman appeared before the Task Force and confirmed his complaint was based in DTIS' failure to provide the spreadsheet in its native format and the Supervisor of Record's delay in responding to him. The Supervisor of Records DCA Paula Jessen also came before the Task Force. Barry Fraser represented DTIS and SFGTV.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented the Task Force did not find that the Supervisor of Records violated the Sunshine Ordinance by taking additional time to respond to Mr. Crossman's request for a determination under Sec. 67.21(d).

The Task Force did find that DTIS was required to provide the responsive spreadsheet in its native Excel format under Sec. 67.21(l) and California Public Records Act 6253.9. The Task Force considered and rejected each of the arguments raised by DTIS for providing only a PDF version of the spreadsheet. Consistent with its earlier Order of Determination against the Clerk of the Board for failure to provide electronic documents in their native Word format, the Task Force found that:

- (1) the Sunshine Ordinance and California Public Records Act ("CPRA") are clear. Requested documents, including electronic documents in their native formats, must be produced unless the responding agency demonstrates that the requested documents contain exempt information that cannot be segregated from non-exempt information,
- (2) DTIS presented no evidence that the specific spreadsheet at issue contained any exempt information, much less that the document contained exempt metadata that could not be segregated from non-exempt electronic metadata;
- (3) DTIS' and the CAO's argument that requiring departments to review metadata for potentially exempt metadata would be too burdensome and, therefore, departments could simply ignore the mandate of Sec. 67.21(l) and CPRA 6253.9 requiring production of electronic documents in "any format" used or easily generated by the department, was in contravention of the Sunshine Ordinance and CPRA. Specifically:
 - (a) That argument, if accepted, would wholly defeat the purpose of Sec. 67.21(l) and CPRA 6253.9. Departments could refuse to release *any* electronic document.
 - (b) Moreover, if reviewing documents for exempt metadata and removing any such data imposed too high a burden on departments, something which was not demonstrated to the Task Force, that can only be addressed through legislative revision; It cannot be addressed by simply ignoring explicit provisions in the Ordinance and CPRA.
- (4) DTIS' and the CAO's final argument, that production of the spreadsheet in its native Excel format was not required because release of the record in

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native electronic format could jeopardize the integrity of the original record, was likewise without basis. Specifically:

(a) Producing a copy of an electronic record does not affect the integrity of the "original" record which is securely maintained by the department;

(b) As above, if accepted, that argument would wholly defeat the purpose of Sec. 67.21(l) and CPRA 6253.9. Departments could refuse to release *any* electronic document.

(c) Moreover, the fact that the electronic copy produced by the department can be edited and altered by its recipient is exactly why SEC. 67.21(l) and CPRA 6253.9 were adopted to, for example,:

- allow members of the public to redline potential legislation with comments;
- allow members of the public to manipulate spreadsheets to show how they would save public money or allocate monies in a budget differently than proposed by the government agency.

In sum, DTIS failed to show any express exemption in either the Sunshine Ordinance or the CPRA that allows DTIS to refuse to produce a native Excel copy of the requested spreadsheet.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Sec. 67.21(l) of the Sunshine Ordinance and Sec. 6253.9 of the California Public Records Act. The Department of Technology is instructed to produce the document in its native Excel format within five (5) days of this Order of Determination. At the request of Chair Chu, Mr. Fraser was asked to examine the metadata in the specific document in question to determine what, if any, alleged exempt metadata it might contain and to present that analysis to the Compliance and Amendments Committee in February.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on January 6, 2009, by the following vote: (Goldman / Johnson)

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

Excused: Williams



Kristin Murphy Chu, Chair
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney
Kimo Crossman
Paula Jessen, Deputy City Attorney
Barry Fraser, Dept of Technology