

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

DATE THE DECISION ISSUED

April 29, 2008

KIMO CROSSMAN v SUNSHINE TASK FORCE ADMINISTRATOR, THE CLERK OF THE BOARD OF SUPERVISORS AND THE DEPARTMENT OF TELECOMMUNICATIONS AND INFORMATION SERVICES (08019)

FACTS OF THE CASE

On January 25, 2008, the Sunshine Posse, a group of individuals interested in public records and public meeting issues, sent an Immediate Disclosure Request to the Clerk of the Board of Supervisors ("Clerk") and the Sunshine Ordinance Task Force Administrator ("Administrator") for all e-mails sent to or from the SOTF account or paper only documents sent to or from SOTF from January 1, 2008, to January 25, 2008. Subsequently, on February 1, 2008, the Sunshine Posse sent another request extending the period from January 26, 2008, to February 1, 2008. When the Sunshine Posse learned that some of the e-mails had been deleted, they requested that the deleted e-mails be restored and released. The request for deleted e-mails was forwarded to the Department of Telecommunications ("DTIS") and Information Services by the Administrator.

COMPLAINT FILED

On April 4, 2008, Kimo Crossman, on behalf of the Sunshine Posse, filed a complaint with the Sunshine Ordinance Task Force, alleging that the Clerk, Administrator and DTIS violated the Sunshine Ordinance Sections 67.21-1 (a), 67.21-1(b), 67.25(d) and State Government Code Sections 6253(b), 6253(c) by failing to produce erased e-mails.

HEARING ON THE COMPLAINT

On April 22, 2008, Complainant Crossman appeared before the Task Force and presented his claim. Respondent Agency was represented by Frank Darby for himself and the Clerk, and Ron Vinson represented DTIS.

The issue in the case is whether the Agency violated Section(s) 67.21. 67.21-1. 67.26 and 67.27 of the Ordinance and/or Sections 6253, 6253.9, and/or 6255 of the California Public Records Act.

ORDER OF DETERMINATION**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Mr. Darby stated that the agency's retention schedule was followed. Paper copies of official e-mails records were made and filed prior to the deletion of the e-mails. Mr. Vinson, stated that he could only provide the raw data file for each day in the period requested (i.e., one complete backup of the SOTF mailbox for each day) and was willing to do so, but there is no guarantee that it will contain deleted e-mail, noting that the backup program is run once a day and if an email is deleted prior to backup it will not be found on the server. Based on the testimony and evidence presented, the Task Force finds that there is no evidence that e-mails reflecting city business were in fact deleted (it was indicated that junk and spam e-mails may have been deleted). Therefore, the Task Force does not require that DTIS provide the 31 versions of the backed-up SOTF mailbox, which would require extensive matching to determine which, if any, e-mails may have been deleted, is warranted.

DECISION AND ORDER OF DETERMINATION

The Task Force finds no violation of the Ordinance and/or the California Public Records Act.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on April 22, 2008 by the following vote: (Pilpel / Goldman)

Ayes: Craven, Cauthen, Chu, Comstock, Pilpel, Goldman

Noes: Knee, Wolfe, Williams

Excused: Chan



Doug Comstock, Chair
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney
Kimo Crossman
Frank Darby
Angela Calvillo, Clerk of the Board
Chris Vein, Director DTIS
Ron Vinson, DTIS