

# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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Sent via interoffice mail

November 5, 2008

Frank Darby Jr., Administrator  
Sunshine Ordinance Task Force  
1 Dr. Carlton B. Goodlett Place Room 244  
San Francisco, CA 94102-4689

**Re: Ethics Complaint Nos. 18-080513 & 19-080513**

Dear Mr. Darby:

Pursuant to Section V.A.3. of the San Francisco Ethics Commission's Regulations for Investigations and Enforcement Proceedings ("the Regulations"), the Ethics Commission conducted an investigation into the above-referenced complaints, referred by the Sunshine Ordinance Task Force ("SOTF").

In the circumstances of these two complaints, staff investigation determined that the respondent indeed made substantial disclosures to the request for records. In some instances, however, the respondent withheld documentation pursuant to state law relating to privilege (*see* Government Code section 6254(k).)

The SOTF has interpreted Sunshine Ordinance sections 67.21(i) and 67.24(b)(1)(iii) to supersede applicable state privilege doctrines. However, the City Attorney has made an opposing interpretation that there are circumstances where the San Francisco Charter and state law may conflict with the Sunshine Ordinance and allow for protection of attorney work-product and recognition of the attorney-client privilege. In facing such conflict of opinion, the Ethics Commission is on record as holding that the Charter always preempts the Sunshine Ordinance.

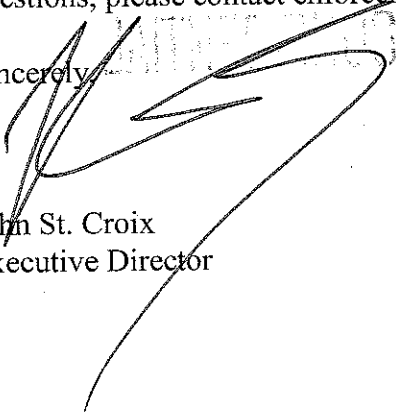
Further, when this is a conflict of opinion between the SOTF and the City Attorney's Office, the Ethics Commission recognizes the City Attorney as the lead attorney for the City and County of San Francisco. Having been elected by the people of San Francisco to that position, the City Attorney is a higher authority than the SOTF, whose members are appointed.

In this case, the respondents have timely provided records except those for which they have legal justification in withholding. Therefore, there is no misconduct, willful or otherwise; and no violation exists in this matter. The SOTF was in error in finding

otherwise.

For these reasons, the Ethics Commission has dismissed these complaints. Pursuant to the Regulations, no further action is contemplated in regard to these complaints. If you have any questions, please contact enforcement staff at (415) 252-3100.

Sincerely,



John St. Croix  
Executive Director