Date: 02-12-08

Item No. 2
File No. 08001

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

☒ **Complaint by: Kimo Crossman v District Attorney**

☐

☐

☐

☐

☐

☐

☐

☐

☐

Completed by: Chris Rustom **Date:** 02-06-08

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

February 4, 2008

Sue Cauthen, Chair
Members of the Complaint Committee

Re: Kimo Crossman v. District Attorney's Office (08001)

Dear Chair Cauthen and Members of the Complaint Committee:

This letter addresses the issue of whether the Sunshine Ordinance Task Force ("Task Force") has jurisdiction over the complaint of Kimo Crossman against the San Francisco District Attorney's Office.

BACKGROUND

On December 18, 2007, Kimo Crossman made an Immediate Disclosure Request by e-mail to the District Attorney's Office for all calendars kept by and for department head Kamala Harris, District Attorney for 10/01/07 – 12/15/07. Kimo Crossman stated for paper only documents please provide as scanned pdf and e-mail to kimo@webnetic.net.

On December 27, 2007, Assistant District Attorney Paul Henderson e-mailed Kimo Crossman and stated that a copy of the requested records are available on the third floor at 850 Bryant Street, San Francisco. ADA Henderson stated that a fee of $7.60 will be charged for printing costs or in the alternative, Kimo Crossman could send a check for $7.60 to the District Attorney's Office and the DA's Office would print, scan, and e-mail a copy of the requested documents.

On December 27, 2007, Kimo Crossman responded and stated that he would pay no fee because there should be no cost for scanning and e-mailing requested documents.

COMPLAINT

On November 6, 2007, Kimo Crossman filed a complaint against DA's Office alleging violations of Sections 67.1, 67.25(d), 67.26, 67.27, 67.21(a) and (b), (k), (l), 67.21-1, 67.29-7(a0, 67.34 of the Sunshine Ordinance. State Government Code Section 6253(a), (c), (d), 6255(a). California Constitution Article 1, Section 3.

SHORT ANSWER

Based on Complainant's allegation and the applicable sections of the Sunshine Ordinance and the California Public Records Act, which are cited below, the Sunshine Ordinance Task Force ***does*** have jurisdiction over the allegation. The allegations are covered under 67.21 and 67.25 of the Ordinance.

DISCUSSION AND ANALYSIS

Article I Section 3 of the California Constitution as amended by Proposition 59 in 2004, the State Public Records Act, the State Brown Act, and the Sunshine Ordinance as amended by Proposition G in 1999 generally covers the area of Public Records and Public Meeting laws that the Sunshine Ordinance Task Force uses in its work.

The Sunshine Ordinance is located in the San Francisco Administrative Code Chapter 67. All statutory references, unless stated otherwise, are to the Administrative Code.

Section 67.1 covers findings and purpose of the Ordinance. Section 67.21 governs the release of public documents. Section 67.25 governs the release of public documents after an Immediate Disclosure Request. Section 67.4 covers passive meetings. Section 67.27 covers justification for withholding. Section 67.26 states that withholding of public records be kept to a minimum. Section 67.29-7 deals with Department Head's obligation to maintain records in a professional and businesslike manner. Section 67.34 states that willful failure shall be official misconduct.

State Government Code Section 6253 deals with the release of public records, and Section 6255 covers justification for withholding of records.

In this case Kimo Crossman's allegations regarding the charging of fees when the records were requested in electronic format puts the case under the jurisdiction of the Task Force and the Task Force will have to determine if the DA's Office violated the Ordinance and/or the CPRA and if so what specific sections.

kimo <kimo@webnetic.net>
Sent by:
kimocrossman@gmail.com

01/03/2008 09:33 PM

Please respond to
kimo@webnetic.net

To SOTF <sotf@sfgov.org>, "Paul Henderson" <paul.henderson@sfgov.org>, "SFDA PublicRecordsRequest"

cc

bcc

Subject Sunshine Complaint DA Kamela Harris calendars $7.60 cost

Submitted on: 1/3/08

Department: District Attorney

Contacted: Sandip Patel, Paul Henderson, Kamala Harris

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: 67.1, 67.25 d, 67.27,67.26, 67.21(a),(b),(i), (k), (l),67.21-1,67.29-7(a),67.34, Government Code 6253(a), 6253(c),6253(d), 6255(a),Constitution Article 1, Section 3

Description: I requested Ms. Harris' calendar, I requested it be sent to PDF and emailed to me or faxed to me at no cost or posted on the city website all these for free, the DA is charging $7.60 for the electronic calendar when the cost should be free.

Because of this list of violations, the DA who should be well versed in the law apparently continues to ignore following many aspects of the Sunshine Ordinance, therefore I request that Kamala Harris, Sandip Patel and Paul Henderson be found in WillFul Failure and referred to the AG, Ethics Commission, Board of Supervisors and an out of county DA - San Jose for Official Misconduct.

Please see attached email for more details

Hearing: Yes

Date: November 6, 2007

Name: Kimo Crossman

Address:

City:

Zip:

Phone:

Email: kimo@webnetic.net

Anonymous:

---------- Forwarded message ----------
From: kimo <kimo@webnetic.net>
Date: Dec 27, 2007 6:03 PM
Subject: Re: Immediate Disclosure Request - District Attorney/Dept Head calendar
To: SFDA PublicRecordsRequest <sfda.publicrecordsrequest@sfgov.org>, Paul Henderson <Paul.Henderson@sfgov.org>, sandip_patel <sandip_patel@sfgov.org>, "district. attorney" <district.attorney@sfgov.org>

Cc: "home@prosf.org" <home@prosf.org>, Allen Grossman
<grossman356@mac.com>, Wayne Lanier <w_lanier@pacbell.net>

Thank you!

I will not be incurring cost, My request was clear, please print the calendars to PDF and email the PDF as every other city department has done or fax it to F: 415-387-5904 per 67.21 l, 67.21-1 and 6253.9

I hope that any redactions have been justified with specific permissive exemption and appropriate balancing tests with relevant facts and keyed with footnote per 67.26 and 67.27

Also, What is the status of the other Calendar request?

On Dec 27, 2007 3:42 PM, SFDA PublicRecordsRequest <
sfda.publicrecordsrequest@sfgov.org> wrote:
> December 27, 2007
>
>
> Kimo Crossman
> kimo@webnetic.net
>
>
> Re: Sunshine Request For The District Attorney's Calendar
>
>
> Dear Mr. Kimo Crossman,
>
> This is in reply to a request received by the District Attorney's Office on
>
> December 18, 2007 whereby you requested the District Attorney's calendar.
>
> You may obtain a copy of the materials you requested at the District
>
> Attorney's Office on the Third Floor at 850 Bryant Street, San Francisco,
>
> California. A fee of $7.60 will be charged for printing costs. In the
>
> alternative, you can send a check to the District Attorney's Office for
>
> $7.60 and we can print, scan, and then email a copy of the documents you
>
> requested.
>
>
>
>
>
>
>
>
> Very truly yours,
>
> PAUL HENDERSON
> Assistant District Attorney
>
>
>
> "Kimo Crossman"
> <kimo@webnetic.ne
> t> To
> "'SFDA PublicRecordsRequest'"
> 12/17/2007 10:49 <sfda.publicrecordsrequest@sfgov.or
> PM g>, "'Paul Henderson'"
> <Paul.Henderson@sfgov.org>,

> <Sandip_Patel .gov.org >,
> <District.Attorney@sfgov.org>
> cc
> < home@prosf.org>,
> <w_lanier@pacbell.net>, "'Allen
> Grossman'" < grossman356@mac.com>,
> <Dougcoms@aol.com>, "'Joe Lynn'"
> < joelynn114@hotmail.com>, "'Ben
> Rosenfeld'"
> < ben.rosenfeld@comcast.net>,
> "'David Waggoner'"
> <dpwaggoner@gmail.com >, "'h.
> brown'" <h@ludd.net>
> Subject
> Immediate Disclosure Request -
> District Attorney/Dept Head
> calendar
>
>
>
>
>
>
>
>
>
>
> Immediate Disclosure Request
>
> 12/18/07:
>
> Please provide all calendars kept by and for department head Kamela Harris
> District Attorney for 10/01/07-12/15/07 This includes calendars she
> herself keeps on non city property if they refer to city business or the
> performance of her job. Please key with footnotes all redactions. For
> each redaction, please use applicable balancing tests with specific facts
> or case law which validates the minimum withholding. Please note a general
> appeal to privacy is not valid. In fact, under 67.27 (a), a Specific
> Permissive Exemption is required.
>
> For paper only documents please provide as scanned pdf and email to
> kimo@webnetic.net
>
> CALIFORNIA CONSTITUTION
>
> ARTICLE 1
>
> SEC. 3. (a) The people have the right to instruct their representatives,
> petition government for redress of grievances, and assemble freely to
> consult for the common good.
>
> (b) (1) The people have the right of access to information concerning the
> conduct of the people's business, and, therefore, the meetings of public
> bodies and the writings of public officials and agencies shall be open to
> public scrutiny.
>
>
> (2) A statute, court rule, or other authority, including those in effect on
> the effective date of this subdivision, shall be broadly construed if it
> furthers the people's right of access, and narrowly construed if it limits
> the right of access. A statute, court rule, or other authority adopted
> after the effective date of this subdivision that limits the right of
> access shall be adopted with findings demonstrating the interest protected
> by the limitation and the need for protecting that interest.
>
>
>
> SEC. 67.29-5. CALENDARS OF CERTAIN OFFICIALS.
>

>
> The Mayor, The City Attorney, and every Department Head shall keep or cause
> to be kept a daily calendar wherein is recorded the time and place of each
> meeting or event attended by that official, with the exclusion of purely
> personal or social events at which no city business is discussed and that
> do not take place at City Offices or at the offices or residences of people
> who do substantial business with or are otherwise substantially financially
> affected by actions of the city. For meetings not otherwise publicly
> recorded, the calendar shall include a general statement of issues
> discussed. Such calendars shall be public records and shall be available to
> any requester three business days subsequent to the calendar entry date.
> (Added by Proposition G, 11/2/99)
>

kimo <kimo@webnetic.net>
Sent by:
kimocrossman@gmail.com

01/14/2008 06:39 PM

Please respond to
kimo@webnetic.net

To SOTF <sotf@sfgov.org>

cc "Paul Henderson" <Paul.Henderson@sfgov.org>, "Sandip Patel" <sandip.patel@sfgov.org>

bcc

Subject Re: Sunshine Complaint Received: #08001_Kimo Crossman vs District Attorney

I wish to amend this description to indicate that I had also requested a calendar into January for Ms. Harris and it has not been provided.