

Date: 02-12-08

Item No. 4
File No. 08004

SUNSHINE ORDINANCE TASK FORCE
COMPLAINT COMMITTEE
AGENDA PACKET CONTENTS LIST*

- Complaint by: Kimo Crossman v Coty Attorney's Office**
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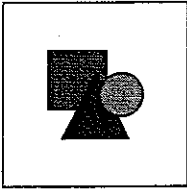
Completed by: Chris Rustom

Date: 02-07-08

***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.



DENNIS J. HERRERA
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. City Attorney's Office (08004)

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 City Attorney's Office.

BACKGROUND

On December 6, 2007, Kimo Crossman made an Immediate Disclosure Request ("IDR") for public records with Alexis Thompson of the City Attorney's Office. Kimo Crossman's IDR requested all communications and advice for the period of May 2007 to the present with the City Attorney's Office regarding matter related to Open Government, public records, Sunshine Task Force r privacy as described in Government Code § 67.24(b)(1)(iii) & 67.21(i). Kimo Crossman also requested advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance. Kimo Crossman requested the detailed billing records related to the advice and detailed calendars of the attorneys providing the advice.

On December 7, 2007, Alexis Thompson responded and based under Section 6253(c) of the Public Records Action and Section 67.25(b) of the Sunshine Ordinance, the CAO invoked an extension of time not to exceed 14 days to respond to the IDR.

Kimo Crossman claimed that he did not receive the records even after the extension. On 1/3/08, Kimo Crossman petitioned the Supervisor of Records from the City Attorney's Office and asked for a determination. DCA Paula Jesson responded to the request. Kimo Crossman stated that DCA Jesson's response was that Kimo Crossman would have to wait until the City Attorney's Office completes their review of records.

COMPLAINT

On November 29, 2007 Complainant Kimo Crossman filed a complaint against the City Attorney's Office alleging violations sections 67.1; 67.25(d), 67.26, 67.21.(a), (b), (i), 67.24(d), 67.34 of the Sunshine Ordinance and State Government Code Sections 6253 and 6255.

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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 67.21 generally covers requests for documents and Section 67.25-5 covers Immediate Disclosure Requests

In this case Kimo Crossman alleges that he made requests for the communications, advice, billing records and calendars involving the City Attorney's Office and the CAO on Sunshine Ordinance and State Public records matters and alleges that he did not receive them. The Task Force has subject matter jurisdiction over this complaint and will have to determine if the City Attorney's Office violated the Ordinance.



kimo <kimo@webnetic.net>

Sent by:
kimocrossman@gmail.com

01/10/2008 06:23 PM

Please respond to
kimo@webnetic.net

To SOTF <sof@sfgov.org>, cityattorney@sfgov.org, "Paula
Jesson" <paula.jesson@sfgov.org>

cc

bcc

Subject SOTF Complaint District Attorney Sunshine Communications
with City Attorney

Submitted on: 1/10/2007

Department: City Attorney

Contacted: Matt Dorsey, Paula Jesson, Alexis Thompson

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), 67.24 (d)
67.34, Government Code 6253, 6255

Description: I requested communications with between the City Attorney and the District Attorney on Sunshine matters, detailed billing records for this advice and calendars of City Attorneys who advised even if no billing records were created. After a 14 day extension not additional response was provided by the office, no records have been provided and not incrementally. No notification that my requests were being prioritized. Silence.

On 1/3 I appealed to the Supervisor of Records for determination of 4 requests which were significantly overdue even after extensions at the City Attorney's office. All of these requests were reasonable, for example I requested the communications between the District Attorney and the City Attorney re Sunshine Matters for a period. Another one: all Open Government advice provided to the new Clerk of the Board, or any records of communications with Harrison Sheppard.

Ms. Jesson, the Supervisor or Records claims I have to wait until the city attorney office completes their review of records, that is not correct, if they have not provided a response besides the extension they have failed to comply. And an appeal is valid.

Ms. Jesson does not understand that law. "If the custodian refuses, fails to comply, or incompletely complies" That has occurred, a determination must be processed within ten days of my appeal request.

She apparently is claiming that the office of 200 lawyers plus staff has to prioritize my requests even though I was not notified that they were prioritized, nor the order they were prioritized and

she has provided no legal basis for prioritizing my requests.

Ms Jesson:

You submitted five petitions on January 3, 2008. Four of those relate to requests for records made to this office. This office has not yet responded to this request. As you know, because of the volume of your public records requests to this office, it has become necessary to prioritize them. When this office has completed its review and determined that a record that you have requested falls within a protected category and should be withheld, you may appeal the denial to the Supervisor of Records. Until that time, your appeal is premature

67.21

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

Please see attached email for more details

Hearing: Yes

Date: 1/10/08

Name: Kimo Crossman

Address:

City:

Zip:

Phone:

Email: kimo@webnetic.net

Anonymous:

----- Forwarded message -----

From: kimo <kimo@webnetic.net>

Date: Jan 3, 2008 9:16 PM

Subject: APPEAL: immediate disclosure request communications with da about sunshine matters

To: Alexis Thompson <Alexis.Thompson@sfgov.org>, "home@prosf.org" <home@prosf.org>,

Allen Grossman <grossman356@mac.com>, cityattorney@sfgov.org, Matt Dorsey <

Matt.Dorsey@sfgov.org>, kimo <kimo@webnetic.net>, Paula Jesson <paula.jesson@sfgov.org

>

Ms. Jesson

This is an appeal for these records

On Dec 31, 2007 11:25 AM, kimo <kimo@webnetic.net> wrote:

>

>

> On Dec 27, 2007 6:24 PM, kimo <kimo@webnetic.net> wrote:

>>

>>

>>

>> On Dec 26, 2007 5:06 PM, kimo <kimo@webnetic.net> wrote:

>>

>>>

>>>

>>>

>>> On Dec 10, 2007 2:45 PM, Alexis Thompson <Alexis.Thompson@sfgov.org>

> wrote:

>>>

>>>>

>>>> Dear Kimo:

>>>>

>>>> Pursuant to Section 6253 (c) of the Public Records Act and Section
> 67.25 (b) of the Sunshine Ordinance, we are invoking an extension of time to
> respond to your public records request below in order to give us an
> adequate amount of time to search for documents that may be responsive to
> your request. We are hopeful that we will have a response for you in less
> than fourteen days.

>>>>

>>>> Best,

>>>> ALEXIS THOMPSON

>>>> Deputy Press Secretary

>>>>

>>>>

>

>>>> OFFICE OF CITY ATTORNEY DENNIS HERRERA
>>>> San Francisco City Hall, Room 234
>>>> 1 Dr. Carlton B. Goodlett Place
>>>> San Francisco, California 94102-4682
>>>>
>>>> (415) 554-4653 Direct
>>>> (415) 554-4700 Reception
>>>> (415) 554-4715 Facsimile
>>>> (415) 554-6770 TTY
>>>>
>>>> <http://www.sfgov.org/cityattorney/>
>>>>
>>>> _____
>>>>
>>>> <http://www.sfgov.org/cityattorney/>
>>>> ----- Forwarded by Alexis Thompson/CTYATT on 12/07/2007 02:38 PM -----
>>>>
>>>> "Kimo Crossman" <kimo@webnetic.net>
>>>>
>>>> 12/06/2007 05:00 PM
>>>>
>>>> To "Cityattorney" <CityAttorney@sfgov.org>, "Alexis Thompson"
> <Alexis.Thompson@sfgov.org>
>>>>
>>>> cc "Allen Grossman" <grossman356@mac.com>, <home@prosf.org>
>>>>
>>>> Subject immediate disclosure request communications with da about
> sunshine matters
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>>>> Immediate Disclosure Request
>>>>
>>>> City Attorney:
>>>>
>>>> Please provide all communications and advice for the period of May
> 2007- Present with the San Francisco District Attorney's office regarding
> matters related to Open Government, public records, Sunshine Taskforce or
> privacy as described in Govt. Code 67.24 (b) (1) (iii) & 67.21 i:
>>>>
>>>> (iii) Advice on compliance with, analysis of, an opinion concerning
> liability under, or any communication otherwise concerning the California
> Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any



"Kimo Crossman"
<kimo@webnetic.net>

02/05/2008 06:56 AM

Please respond to
<kimo@webnetic.net>

<soff@sfgov.org>, <paula.jesson@sfgov.org>,
To <cityattorney@sfgov.org>, <Alexis.Thompson@sfgov.org>,
<Matt.Dorsey@sfgov.org>
cc "'Allen Grossman'" <grossman356@mac.com>,
<home@prosf.org>

bcc

Subject Amendment to complaints #08004-08007

Please add the additional code sections to each complaint

Government Code 6257 for failure to respond "Promptly"

67.21 (a) for failure to respond without "unreasonable delay"

67.21 (d) for failure to issue a determination by the Supervisor of Records in ten days

67.25 (b) for invalid invocation of extension of time for easily accessible billing reports and calendars

67.26 for assertion that work effort could be queued "The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request."

For 08006 only 67.22 failure to provide Oral Information

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY



DENNIS J. HERRERA
City Attorney

MATT DORSEY
Public Information Officer

February 5, 2008

Honorable Members, Sunshine Ordinance Task Force
c/o Frank Darby, Jr., Administrator
Office of the Clerk, Board of Supervisors
Room 244, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

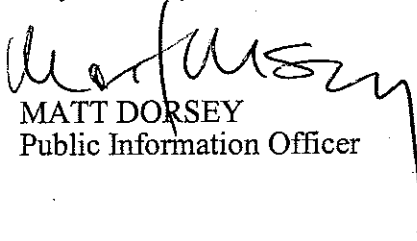
Re: Complaint No. 08004

Dear Task Force Members:

This letter addresses the jurisdiction of the Task Force over the subject complaint. We acknowledge that the Task Force has jurisdiction. We will address the merits of the complaint at a later time.

Very truly yours,

DENNIS J. HERRERA
City Attorney


MATT DORSEY
Public Information Officer

RECEIVED
BOARD OF SUPERVISORS
CITY OF SAN FRANCISCO

2008 FEB -5 AM 11:22

BY CR