

Date: Sept.9, 2008

Item No. 4
File No. 08042

SUNSHINE ORDINANCE TASK FORCE
COMPLAINT COMMITTEE
AGENDA PACKET CONTENTS LIST*

Complaint by: Kimo Crossman against SFGTV, Media Services and COB.

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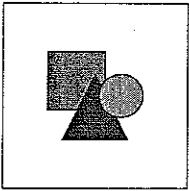
Completed by: Chris Rustom

Date: Sept 4, 2008

***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

September 3, 2008

Nick Goldman Chair
Members of the Complaint Committee

Re: Kimo Crossman (08042) v. SFGTV, Media Services and Clerk of the Board of Supervisors.

Dear Chair Goldman 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 SFGTV, Media Services and the Clerk of the Board of Supervisors.

BACKGROUND

The San Francisco Board of Supervisors passed an ordinance that expanded section 67.14 of the Administrative Code/Sunshine Ordinance that provided for digital form of audio or video recordings of policy body meetings. After the Task Force meetings of 6/10/08 and 7/22/08, Kimo Crossman requested the digital recordings of those meetings. The Task Force administrator advised Kimo Crossman that digital recordings of those meetings are not available because the Mayor did not fund the staff positions to make digital recording machines operational.

COMPLAINT

On August 1, 2008, Kimo Crossman filed a complaint against the SFGTV, Media Services and the Clerk of the Board of Supervisors. alleging violations of the Sunshine Ordinance.

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 (67.14) 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.

Letter to the Complaint Committee

Page 2

September 3, 2008

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 covers Immediate Disclosure Requests. CPRA Section 6253 generally covers Public Records Requests.

Sunshine Ordinance section 67.14 covers the recordings of meetings of policy bodies.

In this case, Kimo Crossman alleges violation of 67.14 of the Ordinance. This section covers the digital recordings of policy body meetings. The Task Force will determine whether the SFGTV, Media Services and the Clerk of the Board of Supervisors. violated the Ordinance.



<complaints@sfgov.org>
08/01/2008 10:59 AM

To <sotf@sfgov.org>
cc
bcc
Subject Sunshine Complaint

History:  This message has been forwarded.

Submitted on: 8/1/2008 10:59:47 AM

Department: DTIS, SFGTV, City Administrator, Media Services, SOTF Admin, COB

Contacted: Frank Darby, Rohan Lane, Jack Chin, Chris Rustom

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: 67.14 (c)

Description: Digital recordings of the 6/10/08 & 7/22/08 SOTF meetings were made but have not been posted on the city website.

Hearing: Yes

Date: 7/31/2008

Name: Kimo Crossman

Address:

City:

Zip:

Phone:

Email:

Anonymous:



<complaints@sfgov.org>
08/01/2008 10:59 AM

To <sof@sfgov.org>
cc
bcc
Subject Sunshine Complaint

History:

 This message has been forwarded.

Submitted on: 8/1/2008 10:59:47 AM

Department: DTIS, SFGTV, City Administrator, Media Services, SOTF Admin, COB

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Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: 67.14 (c)

Description: Digital recordings of the 6/10/08 & 7/22/08 SOTF meetings were made but have not been posted on the city website.

Hearing: Yes

Date: 7/31/2008

Name: Kimo Crossman

Address:

City:

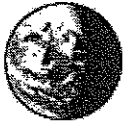
Zip:

Phone:

Email:

Anonymous:

Confidentiality_Requested: Yes



"Kimo Crossman"
 <kimo@webnetic.net>
 08/01/2008 11:04 AM

To "SOTF" <sotf@sfgov.org>
 cc <grossman356@mac.com>
 bcc
 Subject RE: Sunshine Complaint

NO, No confidentiality is requested. I have never requested confidentiality. This is a public record and a public process. The taskforce as already ruled on this issue. There is no general expectation of privacy nor is disclosing info an unwarranted invasion of privacy.

Also, please confirm that the original submitted email will be part of the packet.

Lastly, please provide a complaint #

thanks

-----Original Message-----

From: SOTF [mailto:sotf@sfgov.org]
 Sent: Friday, August 01, 2008 11:00 AM
 To: kimo@webnetic.net
 Subject: Fw: Sunshine Complaint

Mr Crossman,

This is for your review and approval.

Chris Rustom
 Asst. Administrator
 Sunshine Ordinance Task Force
 1 Dr. Carlton B. Goodlett Place
 City Hall, Room 244
 San Francisco, CA 94102-4689
 SOTF@SFGov.org
 OFC: (415) 554-7724
 FAX: (415) 554-7854

Complete a SOTF Customer Satisfaction Survey by clicking the link below.
http://www.sfgov.org/site/sunshine_form.asp?id=34307

----- Forwarded by SOTF/SOTF/SFGOV on 08/01/2008 11:00 AM -----

<complaints@sfgov.org>

08/01/2008 10:59 AM

<sotf@sfgov.org>

To

cc

Subject

Sunshine Complaint



"Kimo Crossman"
<kimo@webnetic.net>
07/31/2008 11:13 PM

To "SOTF" <sotf@sfgov.org>
"Kristin Murphy Chu" <kristin@chu.com>,
cc <grossman356@mac.com>, "Rohan Lane"
<RohanLane@sfgov.org>, "Jack Chin"
bcc
Subject SOTF Complaint - Failure to post digital recording on city website

Please include the below email chain, images and attachments in the file for this complaint.

Submitted on: 7/31/08

Department: DTIS-SFGTV/
City Administrator-Media Services/
SOTF Administrator/
Clerk of the Board

Contacted: Frank Darby, Rohan Lane, Jack Chin, Chris Rustom

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: 67.14 (c)

Description:

Digital recordings of the 6/10/08 & 7/22/08 SOTF meetings were made but have not been posted on the city website.

c) Every City policy body, agency or department shall audio or video record every regular meeting, special meeting, or hearing open to the public held in a City Hall hearing room that is equipped with audio or video recording facilities, except to the extent that such facilities may not be available for technical or other reasons. Each such audio or video recording shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. The City shall make such audio or video recording available in digital form at a centralized location on the City's web site (www.sfgov.org) within seventy-two hours of the date of the meeting or hearing and for a period of at least two years after the date of the meeting or hearing. Inspection of any such recording shall also be provided without charge on an appropriate play back device made available by the City. This subsection (c) shall not be construed to limit or in any way modify the duties created by any other provision of this article, including but not limited to the requirements for recording closed sessions as stated in Section 67.8-1 and for recording meetings of boards and

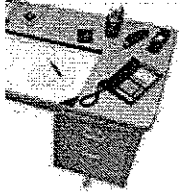
commissions enumerated in the Charter as stated in subsection (b) above.

Hearing: Yes

Date: 7/31/08

Name: Kimo Crossman

Email: kimo@webnetic.net



Frank Darby/BOS/SFGOV
08/07/2008 01:59 PM

To SOTF/SOTF/SFGOV@SFGOV
cc
bcc
Subject Fw: Response to SOTF Complaint #08042, Kimo Crossman v. DTIS/SFGTV etal



Olga
Ryerson/ADMSVC/SFGOV
08/07/2008 12:39 PM

To Frank Darby/BOS/SFGOV@SFGOV
cc Chris Rustom/BOS/SFGOV@SFGOV
Subject Response to SOTF Complaint #08042, Kimo Crossman v. DTIS/SFGTV etal

Dear Mr. Darby:

Please see attached response to subject complaint on behalf of the Office of the City Administrator, DTIS, SFGTV, and City Hall Media Services.

If you have any questions, please feel free to give me a call.

Sincerely,

Olga A. Ryerson
Office of the City Administrator



SOTF 8-7-08 response.pdf

Olga A. Ryerson
Executive Assistant to the City Administrator
City Hall, Room 362
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Phone: (415) 554-6927
Cell: (415) 725-7236
Fax: (415) 554-4849



OFFICE OF THE CITY ADMINISTRATOR

Gavin Newsom, Mayor
Edwin M. Lee, City Administrator

August 7, 2008

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

Subject: SOTF Complaint #08042, Kimo Crossman v. DTIS/SFGTV et al

Dear Mr. Darby:

The Office of the City Administrator provides this initial response to the above-captioned complaint on behalf of this office, DTIS, SFGTV, and City Hall Media Services.

The above-mentioned departments and agencies contest the jurisdiction of the Sunshine Ordinance Task Force ("SOTF") to hear this matter as a complaint and request a hearing before the Complaint Committee of the SOTF on September 9, 2008. We will provide our reasons for contesting jurisdiction in a subsequent communication.

Sincerely,

A handwritten signature in cursive script that reads "Amy L. Brown".

for Edwin M. Lee
City Administrator

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 544-5227

August 11, 2008

Honorable Members
Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

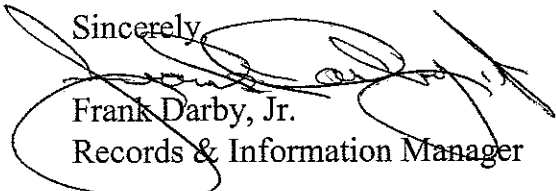
Re: Complaint #08042_Crossman vs. COB & SOTF-A, et al

Dear Task Force Members:

This letter is in response to the above titled complaint filed against the Clerk of the Board of Supervisors and the Sunshine Ordinance Task Force Administrator by Kimo Crossman.

The complainant alleges a violation of Section 67.14 (c). This allegation is without merit. Further, this matter is not within the jurisdiction of the Task Force (Sections 67.1 (e), 67.21 (e), and (h), 67.30, and 67.33). The Department is therefore contesting jurisdiction, and is requesting a pre-hearing conference with the Complaint Committee of the Sunshine Ordinance Task Force.

Sincerely,


Frank Darby, Jr.
Records & Information Manager

c: Angela Calvillo, Clerk of the Board



"Kimo Crossman"
<kimo@webnetic.net>
08/11/2008 10:28 AM

To "SOTF" <sotf@sfgov.org>, <amy.brown@sfgov.org>, <ed.lee@sfgov.org>, <olga.ryerson@sfgov.org> <grossman356@mac.com>, <home@prof.org>, cc <Pmonette-shaw@earthlink.net>, <elc@lrolaw.com>, "Richard Knee" <rak0408@earthlink.net>, "Kristin Murphy" bcc
Subject Submittal for #08042_Kimo Crossman v DTIS, SFGTV, Media Services, City Administrator, Clerk of the Board, SOTF Administrator

Submittal for #08042

Responding to the challenge from Frank Darby and Ed Lee that the complaint about posting digital recordings as required under 67.14C whether it can be heard by the Sunshine Taskforce. This is a matter within the **purview of the taskforce because it relates to the ordinance**. That's the only question for Complaints to answer.

There are other non inspection/production of public records/public meeting provisions in Sunshine – ten day rule before contract approved and written summary of verbal contract negotiations are two examples. Keeping a Department head calendar or storing records in a professional manner. Efficient use of technology. Restrictions on funds used to lobby against Open Government. Department head declaration for training. 67.21 C Info about Info queries and required referrals to DA.

The Sunshine taskforce advises and hears complaints on *any* violation of the ordinance can be heard on 67.30 C & 67.34 (failure to discharge **any** duty).

I have cited other relevant portions of Sunshine below on this dispute below.

67.30

(c) The task force shall advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter.

SEC. 67.34. WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT.

*The willful failure of any elected official, department head, or other managerial city employee to discharge **any duties** imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.*

67.1

(c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and

employ them. **New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.**

(d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. **Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.**

SEC. 67.5. MEETINGS TO BE OPEN AND PUBLIC; APPLICATION OF BROWN ACT.

All meetings of any policy body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et. seq.) and of this article. **In case of inconsistent requirements under the Brown Act and this article, the requirement which would result in greater or more expedited public access shall apply.**

67.14

(c) Every City policy body, agency or department shall audio or video record every noticed regular meeting, special meeting, or hearing open to the public held in a City Hall hearing room that is equipped with audio or video recording facilities, except to the extent that such facilities may not be available for technical or other reasons. **Each such audio or video recording shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. The City shall make such audio or video recording available in digital form at a centralized location on the City's web site (www.sfgov.org) within seventy-two hours of the date of the meeting or hearing and for a period of at least two years after the date of the meeting or hearing.** Inspection of any such recording shall also be provided without charge on an appropriate play back device made available by the City. This subsection (c) shall not be construed to limit or in any way modify the duties created by any other provision of this article, including but not limited to the requirements for recording closed sessions as stated in Section 67.8-1 and for recording meetings of boards and commissions enumerated in the Charter as stated in subsection (b) above.

SEC. 67.13. BARRIERS TO ATTENDANCE PROHIBITED.

(a) No policy body shall conduct any meeting, conference or other function in any facility that excludes persons on the basis of actual or presumed class identity or characteristics, or which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever the Board of Supervisors, a board or commission enumerated in the charter, or any committee thereof anticipates that the number of persons attending the meeting will exceed the legal capacity of the meeting room, any public address system used to amplify sound in the meeting room shall be extended by supplementary

speakers to permit the overflow audience to listen to the proceedings in an adjacent room or passageway, unless such supplementary speakers would disrupt the operation of a City office.

SEC. 67.21-1. POLICY REGARDING USE AND PURCHASE OF COMPUTER SYSTEMS.

(a) It is the policy of the City and County of San Francisco to utilize computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this section. **To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall program and design these systems to ensure convenient, efficient, and economical public access to records and shall make public records easily accessible over public networks such as the Internet.**

(b) Departments purchasing new computer systems shall attempt to reach the following goals as a means to achieve lower costs to the public in connection with the public disclosure of records:

(1) Implementing a computer system in which exempt information is segregated or filed separately from otherwise disclosable information.

(2) Implementing a system that permits reproduction of electronic copies of records in a format that is generally recognized as an industry standard format.

(3) **Implementing a system that permits making records available through the largest non-profit, non-proprietary public computer network, consistent with the requirement for security of information.**

SEC. 67.29-2. INTERNET ACCESS/WORLD WIDE WEB MINIMUM STANDARDS.

Each department of the City and County of San Francisco shall maintain on a World Wide Web site, or on a comparable, readily accessible location on the Internet, information that it is required to make publicly available. **Each department is encouraged to make publicly available through its World Wide Web site, as much information and as many documents as possible concerning its activities.** At a minimum, within six months after enactment of this provision, each department shall post on its World Wide Web site all meeting notices required under this ordinance, agendas and the minutes of all previous meetings of its policy bodies for the last three years. Notices and agendas shall be posted no later than the time that the department otherwise distributes this information to the public, allowing reasonable time for posting. Minutes of meetings shall be posted as soon as possible, but in any event within 48 hours after they have been approved. Each department shall make reasonable efforts to ensure that its World Wide Web site is regularly reviewed for timeliness and updated on at least a weekly basis. The City and County shall also make available on its World Wide Web site, or on a comparable, readily accessible location on the Internet, a current copy of the City Charter and all City Codes.

Board of
Supervisors/BOS/SFGOV
09/02/2008 02:33 PM

To SOTF/SOTF/SFGOV@SFGOV
cc
bcc
Subject Response: Complaint #08042

Date: September 2, 2008

To: Sunshine Ordinance Task Force Members

From: Angela Calvillo, Clerk of the Board
Frank Darby, Sunshine Task Force Administrator

Re: Response - Complaint #08042
Kimo Crossman v DTIS, SFGTV, Media Services, City Administrator, Clerk of the Board, SOTF
Administrator

The Clerk of the Board and the Sunshine Ordinance Task Force Administrator concur with the City Administrator that the Sunshine Ordinance Task Force should not hear the above-captioned matter as a complaint for the reasons set forth in the City Administrator's letter of August 29, 2008 (attached). The Clerk of the Board and the Sunshine Ordinance Task Force Administrator therefore incorporate the City Administrator's letter of August 29, 2008, as our response to the above-captioned matter.



c.a. 8-29-08.pdf

Complete a Board of Supervisors Customer Satisfaction form by clicking the link below.
http://www.sfgov.org/site/bdsupvrs_form.asp?id=18548



OFFICE OF THE CITY ADMINISTRATOR

Gavin Newsom, Mayor
Edwin M. Lee, City Administrator

August 29, 2008

Honorable Members of the Sunshine Ordinance Task Force
Attention: Complaint Committee
c/o Mr. Frank Darby Jr., SOTF Administrator
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Subject: SOTF Complaint # 08042_Kimo Crossman v. DTIS/SFGTV et al

Dear Task Force Members:

The Office of the City Administrator provides this letter as a follow-up to the August 7, 2008 letter in which this office, DTIS, SFGTV, and City Hall Media Services raised the issue of whether it is appropriate for the Sunshine Ordinance Task Force ("SOTF") to hear the above-captioned matter as a complaint. On behalf of the above-named respondents ("respondents"), this letter further addresses this issue. For the reasons explained below, the respondents believe that this matter should not be addressed as a complaint, but rather as a policy issue.

The complaint asserts that the respondents violated San Francisco Administrative Code Section 67.14(c) because, according to the complaint, recordings of the June 10, 2008 and July 22, 2008 SOTF meetings were made, but not posted on the City's website.

Section 67.14(c) was recently added to the Administrative Code by Ordinance No. 80-08. It provides in relevant part:

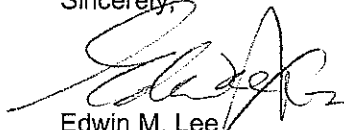
Every City policy body, agency or department shall audio or video record every noticed regular meeting, special meeting, or hearing open to the public held in a City Hall hearing room that is equipped with audio or video recording facilities, except to the extent that such facilities may not be available for technical or other reasons. . . . The City shall make such audio or video recording available in digital form at a centralized location on the City's web site (www.sfgov.org) within seventy-two hours of the date of the meeting or hearing and for a period of at least two years after the date of the meeting or hearing.

As the SOTF members know, the approved budget for the 2008-09 fiscal year did not appropriate funds to implement Section 67.14(c).

A complaint that the respondents did not post certain (or any) recordings on the website essentially challenges the failure to appropriate funds to implement the program described in Section 67.14(c). The remedy for this concern is to seek an amendment to the budget, not to find City departments and agencies in "violation" of an ordinance they have no funding to implement. For this reason, respondents request that the SOTF not treat this matter as a complaint.

However, respondents have no objection if the SOTF wishes to address the issue of the lack of funding to implement Section 67.14(c) as a policy matter at a future meeting. In fact, respondents are aware that the SOTF has already considered this issue at its July 22, 2008 meeting (agenda item # 3). At that meeting, SOTF heard testimony from both DTIS and the General Services Agency that implementation of Ordinance 80-08 is not feasible until sufficient funding is appropriated for the equipment and labor costs required for the program. Respondents recall that SOTF resolved to send a letter to Supervisor Mirkarimi urging that steps be taken to amend the budget to fund the program. If the SOTF wishes to take up this issue again as a policy matter at a future meeting, the appropriate representative(s) of respondents would be willing to attend in order to serve as an informational resource for the Task Force.

Sincerely,



Edwin M. Lee
City Administrator