

Date: Feb. 10, 2009

Item No. 2

File No. 08055

SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST*

- Kimo Crossman vs. DTIS, SFGTV and CAO
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Completed by: Chris Rustom

Date: Feb. 5, 2009

***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.

SUNSHINE ORDINANCE
TASK FORCE



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ORDER OF DETERMINATION

January 27, 2009

DATE THE DECISION ISSUED

January 6, 2009

KIMO CROSSMAN v. DEPARTMENT OF TELECOMMUNICATIONS AND INFORMATION SERVICES, SAN FRANCISCO GOVERNMENT TV, and CITY ATTORNEY'S OFFICE (08055)

FACTS OF THE CASE

On October 12, 2008, Kimo Crossman made an Immediate Disclosure Request ("IDR") to the San Francisco Department of Telecommunications and Information Services ("DTIS") generally and Barry Fraser and Jack Chin of DTIS requesting that DTIS e-mail to Mr. Crossman all active legislation, ordinances, procedures and motions which pertain to programming coverage by SFGTV including any goals, charters or objectives for 2008 to the present. Mr. Crossman also requested any budget information used to support these initiatives. On October 15, 2008, Barry Fraser, Telecommunications Policy Analyst of the Department of Technology responded to the IDR and stated the Department of Technology conducted a thorough search and found no records which met Mr. Crossman's request. Mr. Fraser stated that SFGTV has posted its programming policies on its website. On October 15, 2008, Kimo Crossman responded to Barry Fraser and stated that the response is only a partial response and that he expects a complete response to his original request. On October 17, 2008, Barry Fraser e-mailed to Kimo Crossman a spreadsheet in PDF format. On October 21, 2008, Mr. Crossman objected to the spreadsheet in PDF format and requested that it be provided in its native Excel format so that the formulas could be read. DTIS refused to provide the spreadsheet in its native Excel format. On October 22, 2008, Mr. Crossman appealed to DCA Paula Jesson in her capacity of Supervisor of Records for the release of the spreadsheet in its native Excel format. In response to Mr. Crossman's appeal, DCA Jesson stated that she would need more time, in addition to the 10 days provided in Sec. 67.21(d), before making a determination since there was additional information that she needed from DTIS and the person most familiar with the issues was out of the office for two weeks.

COMPLAINT FILED

On November 25, 2008, Mr. Crossman filed a complaint with the Sunshine Ordinance Task Force ("Task Force") and alleged that DTIS and SFGTV did not provide the spreadsheet in the original Excel format and further alleged that the Supervisor of Records did not act on the appeal in a timely fashion.

ORDER OF DETERMINATION**HEARING ON THE COMPLAINT**

On January 6, 2009, Complainant Mr. Crossman appeared before the Task Force and confirmed his complaint was based in DTIS' failure to provide the spreadsheet in its native format and the Supervisor of Record's delay in responding to him. The Supervisor of Records DCA Paula Jessen also came before the Task Force. Barry Fraser represented DTIS and SFGTV.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented the Task Force did not find that the Supervisor of Records violated the Sunshine Ordinance by taking additional time to respond to Mr. Crossman's request for a determination under Sec. 67.21(d).

The Task Force did find that DTIS was required to provide the responsive spreadsheet in its native Excel format under Sec. 67.21(l) and California Public Records Act 6253.9. The Task Force considered and rejected each of the arguments raised by DTIS for providing only a PDF version of the spreadsheet. Consistent with its earlier Order of Determination against the Clerk of the Board for failure to provide electronic documents in their native Word format, the Task Force found that:

- (1) the Sunshine Ordinance and California Public Records Act ("CPRA") are clear. Requested documents, including electronic documents in their native formats, must be produced unless the responding agency demonstrates that the requested documents contain exempt information that cannot be segregated from non-exempt information,
- (2) DTIS presented no evidence that the specific spreadsheet at issue contained any exempt information, much less that the document contained exempt metadata that could not be segregated from non-exempt electronic metadata;
- (3) DTIS' and the CAO's argument that requiring departments to review metadata for potentially exempt metadata would be too burdensome and, therefore, departments could simply ignore the mandate of Sec. 67.21(l) and CPRA 6253.9 requiring production of electronic documents in "any format" used or easily generated by the department, was in contravention of the Sunshine Ordinance and CPRA.
Specifically:
 - (a) That argument, if accepted, would wholly defeat the purpose of Sec. 67.21(l) and CPRA 6253.9. Departments could refuse to release *any* electronic document.
 - (b) Moreover, if reviewing documents for exempt metadata and removing any such data imposed too high a burden on departments, something which was not demonstrated to the Task Force, that can only be addressed through legislative revision; It cannot be addressed by simply ignoring explicit provisions in the Ordinance and CPRA.
- (4) DTIS' and the CAO's final argument, that production of the spreadsheet in its native Excel format was not required because release of the record in

ORDER OF DETERMINATION

native electronic format could jeopardize the integrity of the original record, was likewise without basis. Specifically:

(a) Producing a copy of an electronic record does not affect the integrity of the "original" record which is securely maintained by the department;

(b) As above, if accepted, that argument would wholly defeat the purpose of Sec. 67.21(l) and CPRA 6253.9. Departments could refuse to release *any* electronic document.

(c) Moreover, the fact that the electronic copy produced by the department can be edited and altered by its recipient is exactly why SEC. 67.21(l) and CPRA 6253.9 were adopted to, for example,:

- allow members of the public to redline potential legislation with comments;
- allow members of the public to manipulate spreadsheets to show how they would save public money or allocate monies in a budget differently than proposed by the government agency.

In sum, DTIS failed to show any express exemption in either the Sunshine Ordinance or the CPRA that allows DTIS to refuse to produce a native Excel copy of the requested spreadsheet.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Sec. 67.21(l) of the Sunshine Ordinance and Sec. 6253.9 of the California Public Records Act. The Department of Technology is instructed to produce the document in its native Excel format within five (5) days of this Order of Determination. At the request of Chair Chu, Mr. Fraser was asked to examine the metadata in the specific document in question to determine what, if any, alleged exempt metadata it might contain and to present that analysis to the Compliance and Amendments Committee in February.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on January 6, 2009, by the following vote: (Goldman / Johnson)

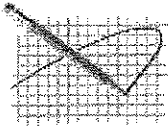
Ayes: Craven, Knee, Cauthen, Washburn, Knoebber, Johnson, Chu, Chan, Goldman

Excused: Williams



Kristin Murphy Chu, Chair
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney
Kimo Crossman
Paula Jessen, Deputy City Attorney
Barry Fraser, Dept of Technology



Barry Fraser /DTIS/SFGOV
02/02/2009 04:44 PM

To kimo@webnetic.net
cc SOTF/SOTF/SFGOV@SFGOV, Paula
Jesson/CTYATT@CTYATT, Ron
Vinson/DTIS/SFGOV@SFGOV, Jack
bcc

Subject Re: Order of Determination: File #08055_Kimo Crossman v
CAO, DTIS, SFGTV

Mr. Crossman,

In accordance with the Sunshine Ordinance Task Force *Order of Determination* dated January 27, 2009, DT is providing the attached file in Excel format. Hidden data has been identified and removed from this file using the Microsoft Hidden Data Removal Tool. This tool identifies some, but not all, hidden data identified by Microsoft in its technical article ID# 223789 regarding sensitive hidden data for Excel files.

If you have any questions, please do not hesitate to contact me.

Barry Fraser
Telecommunications Policy Analyst
City and County of San Francisco
Department of Technology
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San Francisco, CA 94103
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-----SOTF/SOTF/SFGOV wrote: -----

To: kimo@webnetic.net, Paula Jesson/CTYATT@CTYATT, Ron Vinson/DTIS/SFGOV@SFGOV, Barry Fraser/DTIS/SFGOV@SFGOV, Jack Chin/DTIS/SFGOV@SFGOV
From: SOTF/BOS/SFGOV
Sent by: SOTF/SOTF/SFGOV
Date: 01/27/2009 12:11PM
Subject: Order of Determination: File #08055_Kimo Crossman v CAO, DTIS, SFGTV

Attached is the Order of Determination from the Sunshine Ordinance Task Force, regarding the above titled complaint.

Chris Rustom
Asst. Administrator
Sunshine Ordinance Task Force
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San Francisco, CA 94102-4689

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[attachment "08055_Kimo Crossman v DTIS, SFGTV & CAO.pdf" removed by Barry Fraser/DTIS/SFGOV]



SFGTV 750053.xls

A	B	C	D	E	F	G	H	I	J	K	L	
1 DEPARTMENT OF TELECOMMUNICATIONS & INFORMATION SERVICES												
2 DIVISION:		SFGTV										
3 FISCAL YR:		2008 - 2009										
4 Index Code:		750053										
5 PROGRAM		BK4										
6 FUND		AAA										
7 FAMIS PROJECT CODE		None										
8 DTIS PROJECT CODE		953CTW, 953REP, Various PT										
9 MANAGER		JACK CHIN										
10												
11		Closed Captioning Services										
12												
13 Labor												
							A	B	C	D	E	
14	Object Code	Subobject	Object Code/Subobject Code Title	Description	Vendor	Project Code	Reference	FY09 Phase D	FY09 Budget Modification	FY09 Revised Budget	Actual Expenses	Budget Variance
17	FTE			Perm				9.7		9.7		#REF!
18	FTE			Temp				1.08		1.08		#REF!
19	001	00100	Permanent Salaries					682,738		682,738	0	682,738
20	005	00500	Temp Salaries					82,821		82,821	0	82,821
21	009	00900	Premium Pay					1,507		1,507	0	1,507
22	011	01100	Overtime					6,000		6,000	0	6,000
23	Total Salary							773,066	0	773,066	0	773,066
24	013	01301	RETIRE CITY MISC					34,069		34,069	0	34,069
25	013	01379	RETIREMENT PICKUP (PREM/OTHER ADJUSTMENT)					(57)		(57)	0	(57)
26	014	01401	SOCIAL SECURITY (OASDI)					45,451		45,451	0	45,451
27	014	01402	SOCIAL SECURITY - MEDICARE (HI ONLY)					11,212		11,212	0	11,212
28	015	01501	HEALTH SERVICE-CITY MATCH					50,452		50,452	0	50,452
29	015	01581	HEALTH SERVICE-SUBSIDY					0		0	0	0
30	015	01571	DEPENDENT COVERAGE-MISCELLANEOUS					45,996		45,996	0	45,996
31	016	01601	DENTAL COVERAGE					12,452		12,452	0	12,452
32	017	01701	UNEMPLOYMENT INSURANCE					774		774	0	774
33	018	01801	FRINGE ADJUSTMENTS-BUDGET					0		0	0	0
34	019	01911	FLEXIBLE BENEFIT PACKAGE					2,907		2,907	0	2,907
35	019	01912	LONG TERM DISABILITY INSURANCE					3,389		3,389	0	3,389
36	Total Fringe							208,845	0	208,845	0	208,845
37	Total Salaries & Fringe							979,711	0	979,711	0	979,711
38	020	02001	Indirect Cost Reimbursement			953CTW		125,675		125,675	0	125,675
39								0		0	0	0
40	020	020XX	COWCAP					125,675	0	125,675	0	125,675
41	021	02102	Travel Cost Paid to Vendors	Natco Conference (2)		953CTW		4,000		4,000	0	4,000
42	021	02102	Travel Cost Paid to Vendors	Scan-Natco Conference (2)		953CTW		600		600	0	600
43	021	02102	Travel Cost Paid to Vendors	Streaming Media Conference		953CTW		200		200	0	200
44								(980)		(980)	0	(980)
45								0		0	0	0
46	021	021XX	Travel					3,840	0	3,840	0	3,840
47	022	02200	Training	BAVC (Bay Area Video Coalition)		953CTW		5,000		5,000	0	5,000
48	022	02200	Training	Natco registration		953CTW		2,000		2,000	0	2,000
49								(1,050)		(1,050)	0	(1,050)
50								0		0	0	0
51	022	022XX	Training					5,950	0	5,950	0	5,950
52	023	02300	Employee Field Expenses	Budget		953CTW		25		25	0	25
53								0		0	0	0
54	023	023XX	Employee Expenses					25	0	25	0	25
55	024	02400	Membership Fees	Conference	Media Alliance (conference)	953CTW		125		125	0	125
56	024	02400	Membership Fees		Scan Natco	953CTW		200		200	0	200
57	024	02400	Membership Fees	Group membership	Natco	953CTW		500		500	0	500
58	024	02400	Membership Fees	Miscellaneous		953CTW		175		175	0	175
59								0		0	0	0
60	024	024XX	Membership Fees					1,000	0	1,000	0	1,000
61	027	02761	Systems Consulting Services	Video Streaming	Granitus	953CTW		32,000		32,000	0	32,000
62	027	02761	Other Professional Services	Captioning Services - City Attorney	TBD	117CTW		1,100		1,100	0	1,100
63	027	02761	Other Professional Services	Captioning Services - Planning Commission	TBD	118CTW		34,320		34,320	0	34,320
64	027	02761	Other Professional Services	Captioning Services - Mayor's Office	TBD	953CTW		10,000		10,000	0	10,000
65	027	02761	Other Professional Services	Captioning Services - Police Commission	TBD	161CTW		16,632		16,632	0	16,632
66	027	02761	Other Professional Services	Captioning Services - Police Commission	TBD	161CTW		16,632		16,632	0	16,632
67	027	02761	Other Professional Services	Remote	TBD	181CTW		5,676		5,676	0	5,676
68	027	02761	Other Professional Services	Captioning Services - Mayor's Disaster Council	TBD	182CTW		1,320		1,320	0	1,320
69	027	02761	Other Professional Services	Captioning Services - Tax Cab Commission	TBD	183CTW		10,560		10,560	0	10,560
70	027	02761	Other Professional Services	Captioning Services - Public Defender	TBD	165CTW		770		770	0	770
71	027	02761	Other Professional Services	Captioning Services - Local Agency Formation Commission	TBD	181CTW		1,980		1,980	0	1,980
72	027	02761	Other Professional Services	Captioning Services - BOS Meetings	TBD	953CTW		72,000		72,000	0	72,000
73	027	02761	Other Professional Services	Captioning Services - Mayor's Disability Council	TBD	221CTW		4,620		4,620	0	4,620
74	027	02761	Other Professional Services	Captioning Services - Small Business Commission	TBD	229CTW		3,960		3,960	0	3,960
75	027	02761	Other Professional Services	Captioning Services - Board of Appeals	TBD	370CTW		14,256		14,256	0	14,256

A	B	C	D	E	F	G	H	I	J	K	L
1 DEPARTMENT OF TELECOMMUNICATIONS & INFORMATION SERVICES											
2 DIVISION:		SFGTV									
3 FISCAL YR:		2008 - 2009									
4 Index Code:		750053									
5 PROGRAM		BK4									
6 FUND		AAA									
7 FAMIS PROJECT CODE		None									
8 DTIS PROJECT CODE		953CTW, 953REP, Various PT									
9 MANAGER		JACK CHIN									
10		Closed Captioning Services									
11											
12											
13 Labor											
		A B C D E									
14 Object Code	Subobject	Object Code/Subobject Code Title	Description	Vendor	Project Code	Reference	FY09 Phase D	FY09 Budget Modification	FY09 Revised Budget	Actual Expenses	Budget Variance
75	027	02761	Other Professional Services	Commission	415CTW		5,280		5,280	0	5,280
76	027	02761	Other Professional Services	Commission	415CTW		3,300		3,300	0	3,300
77	027	02761	Other Professional Services	Commission	811CTW		13,200		13,200	0	13,200
78	027	02761	Other Professional Services	Authority	622CTW		7,920		7,920	0	7,920
79	027	02761	Other Professional Services	Authority	673CTW		3,960		3,960	0	3,960
80	027	02761	Other Professional Services	Commission	726CTW		11,880		11,880	0	11,880
81	027	02761	Other Professional Services	Commission	735CTW		10,580		10,580	0	10,580
82							0		0	0	0
83	027	027XX	Professional & Specialized Services				265,294	0	265,294	0	265,294
84	029	02900	Budget	Equipment Maintenance	953CTW		3,000		3,000	0	3,000
85							0		0	0	0
86	029	029XX	Maintenance Svcs-Equipment				3,000	0	3,000	0	3,000
87	035	03521	Freight/Delivery	Freight/Delivery	953CTW		150		150	0	150
88	035	03551	Copy Machine	Danka	953CTW		2,520		2,520	0	2,520
89	035	03596	Software License Fees	Adobe Photo Shop	953CTW		1,000		1,000	0	1,000
90	035	03596	Software License Fees	Avid Express Pro	953CTW		1,538		1,538	0	1,538
91	035	03599	Other Current Expenses	Alhambra	953CTW		0		0	0	0
92							0		0	0	0
93	035	035XX	Other Current Expenses				5,208	0	5,208	0	5,208
94	040	04000	Materials/Supplies	Budget - Contingency	953CTW		2,000		2,000	0	2,000
95	040	04950	Office Supplies - Citywide Contract	Office Depot	953CTW		1,051		1,051	0	1,051
96	040	04951	Other Office Supplies	Audio & Video Tapes, Sleeves	CALIFORNIA MEDIA SOLUTION	953CTW	10,000		10,000	0	10,000
97							0		0	0	0
98	040	040XX	Materials & Supplies				13,051	0	13,051	0	13,051
99	081	081CB	Insurance & Risk Reductions		953CTW		5,150		5,150	0	5,150
100	081	081CI	IS - CITY WIDE INFRASTRUCTURE (AAC)		953CTW		615,246		615,246	0	615,246
101	081	081PR	Reproduction		653REP		1,839		1,839	0	1,839
102							0		0	0	0
103	081	081XX	Services of Other Departments				622,235	0	622,235	0	622,235
104	088	088AD	Admin Svcs budget	Disability Counsel Office	221CTW		(14,089)		(14,089)	0	(14,089)
105	088	088BD	Board of Supv	To cover meetings and for Local Agency Formation Comm	181CTW		(9,795)		(9,795)	0	(9,795)
106	088	088BE	Economic & Workforce Development	Office of Small Business Affairs	229CTW		(14,901)		(14,901)	0	(14,901)
107	088	088BI	Building Inspection		415CTW		(60,604)		(60,604)	0	(60,604)
108	088	088CP	City Planning	City Planning Commission	119CTW		(107,262)		(107,262)	0	(107,262)
109	088	088CT	City Attorney		117CTW		(4,025)		(4,025)	0	(4,025)
110	088	088EV	Environment		227CTW		(19,955)		(19,955)	0	(19,955)
111	088	088MT	MTA - Municipal Railway				(38,811)		(38,811)	0	(38,811)
112	088	088MY	Mayor's Office	Mayor's TownHall Meeting	151CTW		(12,500)		(12,500)	0	(12,500)
113	088	088PA	Board of Appeals		370CTW		(50,814)		(50,814)	0	(50,814)
114	088	088PC	Police		161CTW		(90,857)		(90,857)	0	(90,857)
115	088	088PD	Public Defender		165CTW		(10,000)		(10,000)	0	(10,000)
116	088	088RP	Rice & Park				(37,359)		(37,359)	0	(37,359)
117	088	088TY	Tax Commission		163CTW		(23,938)		(23,938)	0	(23,938)
118	088	088UC	Public Utilities		726CTW		(40,015)		(40,015)	0	(40,015)
119							0		0	0	0
120	088	088XX	Expenditure Recovery - AAO (Interdept)				(532,525)	0	(532,525)	0	(532,525)
121	087	08799	Unallocated Recvry	Transportation Authority meetings	622CTW		(37,292)		(37,292)	0	(37,292)
122	087	08799	Unallocated Recvry	Transbay Joint Power Authority	623CTW		(17,701)		(17,701)	0	(17,701)
123	087	08799	Unallocated Recvry	Board of Education	611CTW		(41,856)		(41,856)	0	(41,856)
124							0		0	0	0
125	087	087XX	Expenditure Recovery - Non AAO (Outside Agencies)				(98,849)	0	(98,849)	0	(98,849)
126	Total Non-Labor						415,864	0	415,904	0	415,904
127											
131							2,024,989				Total expenses without recovery
132							1,045,278				Total non-labor without recovery
133											
134					953CTW		802,145				
135					953REP		1,839				
136					117CTW		1,100				
137					119CTW		34,320				
138					161CTW		22,308				
139					182CTW		1,320				
140					183CTW		10,580				

	A	B	C	D	E	F	G	H	I	J	K	L
1	DEPARTMENT OF TELECOMMUNICATIONS & INFORMATION SERVICES											
2	DIVISION:	SFGTV										
3	FISCAL YR:	2008 - 2009										
4	Index Code:	750053										
5	PROGRAM	BK4										
6	FUND	AAA										
7	FAMIS PROJECT CODE	None										
8	DTIS PROJECT CODE	953CTW, 853REP, Various PT										
9	MANAGER	JACK CHIN										
10												
11		Closed Captioning Services										
12												
13	Labor											
14	Object Code	Subobject	Object Code/Subobject Code Title	Description	Vendor	Project Code	Reference	FY09 Phase D	FY09 Budget Modification	FY08 Revised Budget	Actual Expenses	Budget Variance
141							165CTW	770				
142							181CTW		1,980			
143							221CTW		4,620			
144							228CTW		3,960			
145							379CTW		14,256			
146							415CTW		8,580			
147							611CTW		13,200			
148							622CTW		7,920			
149							623CTW		3,960			
150							728CTW		11,880			
151							735CTW		10,560			
152									1,045,278			