

Date: April 9, 2008

Item No. 2

File No. 07088

SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST*

- Order Of Determination of: Kimo Crossman vs Assessor's Office
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Completed by: Chris Rustom

Date: April 2, 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.

SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION
January 8, 2008

January 17, 2008

Kimo Crossman
kimo@webnetic.net

Phil Ting, Assessor
City Hall, Room 190
1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102

Re: Complaint # 07088 filed by Kimo Crossman against the Assessor's Office for alleged violation of Sections 67.1, 67.4 (a), 67.21 (a) and (b), 67.25 (a) and (d), 67.26, 67.27, and 67.34 of the Sunshine Ordinance, Government Code Sections 6253 (a) and (c), 6255 (a), and Constitution Article I, Section 3, for failure to provide requested records, untimely response, failure to provide passive meeting notice, invalid invocation of voluminous documents extension, failure to incrementally deliver records, willful failure and official misconduct.

Based on the information provided to the Task Force from the Complainant Kimo Crossman, the Respondent Zoon Nugyen, and hearing public comment, the following Order of Determination is adopted:

The Sunshine Ordinance Task Force finds that the Assessor's Office violated Section 67.25 (d) of the Sunshine Ordinance for failure to provide records on a rolling basis. The Department is instructed to inform the Task Force and Mr. Crossman as to whether any entries were deleted from the calendar prior to providing the requested records, and to describe the type of entries that were deleted and an explanation for the deletions, within 5 days after the issuance of this Order of Determination.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on January 8, 2008 by the following vote: (Comstock/Craven)
Ayes: Craven, Knee, Cauthen, Chu, Comstock, Chan, Goldman
Recused: Wolfe
Excused: Pilpel, Williams

A handwritten signature in black ink, appearing to read "D. Comstock".

Douglas Comstock, Chair
Sunshine Ordinance Task Force

cc: Ernie Llorente, Deputy City Attorney
Zoon Nugyen, Assessor's Office
Tim Kingsbury, Assessor's Office



April 3, 2008

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

Re: Sunshine Complaint: #07088

Dear Task Force Members:

This letter is in response to Chairman Richard Knee's letter dated March 24, 2008 requesting that the Office of the Assessor-Recorder address three additional concerns the Task Force's Compliance and Amendments Committee (CAC) have which stem from our letter dated January 24, 2008. In addition, it is the intent of this letter to respond to Chairman Knee's addendum dated March 25, 2008.

The following addresses Chairman Knee's March 24th letter:

- The CAC requests clarification as to whether *any* City entity was discussed during entries deleted that are of a "purely per personal/private nature ... and personal or social events in which business pertaining to the Office of the Assessor-Recorder were not discussed." To clarify: the entries in question refer to personal activities such as childcare coordination, medical appointments, and/or social activities in which City business was not discussed.
- There were no calendar entries involving meetings with the City Attorney's Office that pertained to Sunshine or ethics issues. Calendar entries involving meetings with the City Attorney's Office were not disclosed because disclosure of the time or date of such a meeting might compromise the attorney-client privileged communication between the department and its attorneys. A taxpayer, business competitor of a taxpayer, or other interested person might be able to glean the substance of a privileged communication by knowing the time or date of a particular meeting. Nevertheless, in the spirit of Sunshine, the Assessor-



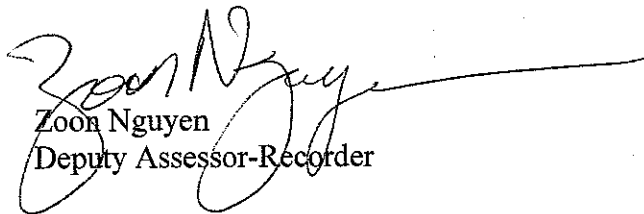
Recorder will agree to provide for the period from June 1, 2007 through November 5, 2007 the aggregate number of calendar entries involving meetings with the City Attorney's Office. During that period there were 15 meetings with the City Attorney's Office. Such disclosure by the Assessor-Recorder shall not be interpreted or construed as a waiver of the attorney-client privilege.

- The justification for providing only job titles is done pursuant to Admin. Code Sec. 67.29-5 In reference to what a department head is required to provide in his/her public calendar, page 82 of the 2007-08 edition of the Good Government Guide explains that "The [Sunshine] Ordinance does not state that the official must include on the calendar the names of individuals attending the meeting. Admin. Code Sec. 67.29-5."

In an email dated March 27, 2008, Chairman Richard Knee made an additional request that asks for the inclusion of "a list of steps that the Assessor-Recorder's Office is taking to implement a policy regarding calendar redactions." The policy that our office has and will continue to implement is to adhere to the requirements, in their entirety, as laid out in Admin. Code Sec. 67.29-5, highlighted by the statements that every Department Head's calendar include "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 "the calendar shall include a general statement of issues discussed."

Thank you for your time, and if you have any additional questions, please feel free to contact me at 415-554-4734.

Sincerely,


Zoon Nguyen
Deputy Assessor-Recorder



Richard Knee
<rak0408@earthlink.net>
03/25/2008 01:13 PM

To phil.ting@sfgov.org, zoon.nguyen@sfgov.org
cc SOTF_Administrator <soft@sfgov.org>, Crossman Kimo
<kimo@webnetic.net>
bcc
Subject Sunshine complaint #07088: addendum

Phil Ting, Assessor-Recorder
Zoon Nguyen, Deputy Assessor-Recorder

In re: Sunshine Ordinance Task Force Complaint #07088, Kimo Crossman vs.
Assessor-Recorder's Office

Dear Sir and Madam:

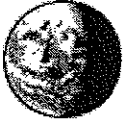
In a letter that I e-mailed to you on Monday, March 24, 2008, I requested that you appear at the next regular meeting of the Sunshine Ordinance Task Force's Compliance and Amendments Committee, on April 9, 2008, to address certain concerns regarding the above-cited case, and that you provide certain information in writing by April 2, 2008.

I write to you now to ask that your written and/or verbal information also include a list of the steps that the Assessor-Recorder's Office is taking to implement a policy regarding calendar redactions.

Again: Please route any and all correspondence on this matter via the Task Force Administrator's Office and copy it to Mr. Crossman; both e-mail addresses appear in the headers at the top of this message. Thank you for your kind attention.

Sincerely,
Richard Knee, Chairman
Sunshine Ordinance Task Force Compliance and Amendments Committee

Cc: Task Force Administrator's Office; Kimo Crossman



Richard Knee
<rak0408@earthlink.net>
03/24/2008 01:18 PM

To phil.ting@sfgov.org, zoon.nguyen@sfgov.org
cc SOTF_Administrator <sotf@sfgov.org>, Crossman Kimo
<kimo@webnetic.net>
bcc
Subject Sunshine complaint #07088

Phil Ting, Assessor-Recorder
Zoon Nguyen, Deputy Assessor-Recorder

In re: Sunshine Ordinance Task Force Complaint #07088, Kimo Crossman vs.
Assessor-Recorder's Office

Dear Sir and Madam:

In response to the above-referenced matter, Ms. Nguyen sent a letter to the Task Force on January 24, 2008, describing certain deletions from the Mr. Ting's activities calendar: entries of a purely personal/private nature; entries subject to attorney-client privilege; entries involving confidential taxpayer information; and replacements of Assessor-Recorder and other employees' names with job titles.

The Task Force appreciates your response. However, the information provided therein has raised additional concerns, which the Task Force's Compliance and Amendments Committee (CAC) would like you to address:

1. "Entries of a purely personal/private nature ... and personal or social events in which business pertaining to the Office of the Assessor-Recorder were not discussed." The CAC believes this description to be too narrow; specifically, there is a question of whether business pertaining to *any* City entity was discussed.
2. "Entries involving meetings with the City Attorney that are to remain confidential due to attorney-client privileged communication." In its Order of Determination on this matter, the Task Force found that attorney-client privilege covers only the subject matter of such meetings; it does not cover the fact that a meeting took place. Moreover, as you might be aware, the Sunshine Ordinance stipulates that consultations with the City Attorney regarding sunshine or ethics issues are not covered under attorney-client privilege.
3. "Specific names of Assessor-Recorder staff and other government employees were replaced by job title." The Task Force believes there is no justification in statutory or case law for this type of redaction or revision to records. If you know that such justification exists, you are required to cite it to the requester of the record.

In addition, the Task Force believes that when dealing with a record request, the responding entity must indicate when a redaction has taken place and indicate the type of information that has been deleted or changed.

The CAC requests that you or a representative from your Office who is knowledgeable on this matter appear at its next regular meeting to address these concerns. The meeting is scheduled for Wednesday, April 9, 2008, at 4 p.m. in City Hall Room 406. The CAC also requests a written response to this note by Wednesday, April 2, 2008, to help Committee members and parties in interest prepare to discuss this matter.

Please route any and all correspondence on this matter via the Task Force Administrator's Office and copy it to Mr. Crossman; both e-mail addresses appear in the headers at the top of this message. Thank you for your kind attention.

Sincerely,
Richard Knee, Chairman
Sunshine Ordinance Task Force Compliance and Amendments Committee

Cc: Task Force Administrator's Office; Kimo Crossman



SOTF/SOTF/SFGOV

03/18/2008 03:49 PM

To Tim Kingsbury/ASRREC/SFGOV@SFGOV, Zoon
Nguyen/ASRREC/SFGOV@SFGOV
cc kimo@webnetic.net
dougcoms@aol.com; rak0408@earthlink.net;
bcc elc@lrolaw.com; Ernest.llorente@sfgov.org;
sotf@brucewolfe.net; hjslaw@jps.net; Madeleine
Licavoli/BOS/SFGOV@SFGOV
Subject March 12, 2006 CAC Hearing Notice Omission re:
#07088_Crossman vs Assessor's Office

Hello Mr. Kingsbury,

Thanks for contacting the office regarding the Assessor's Office absence from the March 12, 2008. After reviewing the e-mail notice of the meeting that was sent out to the parties it appears that our office inadvertently omitted to notify your office of the Compliance and Amendments Committee's (CAC) meeting. Please accept our apologies for this omission.

Please note that after hearing discussion from the complainant and reviewing your response to the Order of Determination the CAC continued the matter to their April 9, 2008, meeting. You will be receiving a letter from the Chair of the committee, Richard Knee, in response to your letter and to request additional information. The next CAC meeting is as follows:

Date: Wednesday, April 9, 2008

Location: City Hall, Room 406

Time: 4:00 p.m.

Frank Darby, 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



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

02/01/2008 09:44 AM

Please respond to
kimo@webnetic.net

To SOTF <sotf@sfgov.org>
"Phil Ting" <Phil.Ting@sfgov.org>, Assessor
cc <Assessor@sfgov.org>, "Tim Kingsbury"
<Tim.Kingsbury@sfgov.org>, "Zoon Nguyen"
bcc
Subject Re: Order of Determination: File #07088_Kimo Crossman v.
Assessor's Office

SOTF Please add this to the file for this matter

Dear Assessor's office,

I have seen the letter you sent regarding calendar redactions. It was a surprise to me because of the following:

- 0) The letter was not sent to me. Please include me on all communications on this matter.
- 1) I specifically requested all calendars, not just Prop G version. I am still requesting all calendars that contain city business.
- 2) Under 67.26, 67.27 all redactions must be keyed with express permissive exemptions, specific facts and applicable balancing tests - that has not occurred. No Redactions were marked on the calendar provided to me. It is in fact unclear if a new calendar was created selectively or if the original was provided with redactions that were not keyed.
- 3) I request the most detailed view of the calendar entries, it is not clear that that was provided.
- 4) You had indicated that staff names were replaced with staff titles. Changing the Public Record is never allowed under law. Additionally if that viewed as a redaction, that is not a legal redaction (see 2).
- 5) As we know the SOTF found Phil Ting violated the Sunshine Ordinance 67.25 d, for failure to provide his readily accessible calendar on a daily incremental basis and instead took 14+ days to provide it. Since Calendars are frequently requested of public officials, the verbal claim that the office had never dealt with a matter like this does not hold any weight. I request a written response addressing this violation by Mr. Ting and a plan for corrective action written by him.

OFFICE OF THE ASSESSOR-RECORDER
SAN FRANCISCO



PHIL TING
ASSESSOR-RECORDER

January, 24, 2008

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

Re: Sunshine Complaint: #07088

Dear Task Force Members:

This letter is in response to the Sunshine Ordinance Task Force Order of Determination dated January 17, 2008. The following entries were deleted from the calendar:

- Entries of a purely personal / private nature (such as childcare coordination, medical appointments, etc.), and personal or social events in which business pertaining to the Office of the Assessor-Recorder was not discussed;
- Entries involving meetings with the City Attorney that are to remain confidential due to attorney-client privileged communication;
- Entries involving confidential taxpayer or taxpayer information regarding assessments; and
- Specific names of Assessor-Recorder staff and other government employees were replaced by job title.

Thank you for your time, and if you have any questions, please feel free to contact me at 415-554-4734.

Sincerely,

A handwritten signature in black ink, appearing to read "Zoon Nguyen", written over a horizontal line.

Zoon Nguyen
Deputy Assessor-Recorder

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2008 JAN 24 PM 2:25
BY Su J. W.