

Date: April 9, 2008

Item No. 4  
File No. 08004,  
08005,  
08007

**SUNSHINE ORDINANCE TASK FORCE**  
**Compliance and Amendments Committee**  
**AGENDA PACKET CONTENTS LIST\***

- Order Of Determination of: Kimo Crossman vs City Attorney'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



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**ORDER OF DETERMINATION**

**DATE THE DECISION ISSUED**

March 27, 2008

*KIMO CROSSMAN v. SAN FRANCISCO CITY ATTORNEY'S OFFICE AND THE SUPERVISOR OF RECORDS (08004, 08005, & 08007)*

**FACTS OF THE CASE**

In Complaint Number 08004 Kimo Crossman states the following:

On December 6, 2007, Kimo Crossman made an Immediate Disclosure Request ("IDR") for public records with Alexis Thompson of the City Attorney's Office. Crossman's IDR requested all communications and advice for the period of May 2007 to the present with the City Attorney's Office, regarding matters related to Open Government, public records, Sunshine Task Force r privacy as described in Government Code § 67.24(b)(1)(iii) & 67.21(i). 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. 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 on Section 6253(c) of the Public Records Act 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.

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

In complaint number 08005, Crossman states the following:

On November 30 2007, Kimo Crossman made an Immediate Disclosure Request ("IDR") for public records with Alexis Thompson of the City Attorney's Office. Crossman's IDR requested all materials and correspondence with or about or provided to Harrison Sheppard, Task Force member. Crossman requested the attorney billing records and calendars of anyone in the CAO who has interacted with him.

On December 4, 2007, Alexis Thompson responded and based on Section 6253(c) of the Public Records Act 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.

### Order of Determination

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

In complaint number 08007, Kimo Crossman states the following:

On December 4, 2007, Kimo Crossman made an Immediate Disclosure Request ("IDR") for public records with Alexis Thompson of the City Attorney's Office. Crossman's IDR requested all communications and advice provided to Angela Calvillo, Clerk of the Board regarding matters related to Open Government, public records, Sunshine Task Force or privacy as described in Government Code Section 67.24(b)(1)(iii) & 67.21(i). In addition, Kimo Crossman requested the 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.

On December 6, 2007, Alexis Thompson responded and based on Section 6253(c) of the Public Records Act 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.

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. 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 FILED

On November 6, 2007, Crossman filed a complaint against the City Attorney's Office and on February 12, 2008 amended his complaint to include the Supervisor or Records alleging violations of Sections 67.1, 67.25(d), 67.26, 67.27, 67.21(a) and (b), (i), (l), 67.24(d), and 67.34 of the Sunshine Ordinance and State Government Code Sections 6253, and 6255.

### HEARING ON THE COMPLAINT

On March 25, 2008, Complainant Kimo Crossman appeared before the Task Force and presented his complaints, focusing on the CAO's withholding of documents and information regarding advice and information provided to the District Attorney's office on compliance with Open Government laws. Respondent Agency was represented by Alexis Thompson, who presented the Agency's defense.

The issue in the case is whether the Agency violated Sections 67.1, 67.21, 67.22, 67.26, 67.27, 67.29-5, and/or 67.34 of the Ordinance and/or Sections 6253 and/or 6255 of the CPRA.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented, the Task Force finds the testimony of Kimo Crossman to be persuasive and finds that sections 67.21 (a) & (i), 67.24 (b)(1)(iii) are applicable in this case with respect to the alleged withholding of records and information on CAO's compliance with Open Government Laws applicable to the District Attorney's office.

### Order of Determination

The Task Force does not find that testimony provided by the Agency persuasive to this case.

The Task Force finds that under the plain language of the Sunshine Ordinance, the advice the CAO gave to Supervisors and their agents regarding compliance with Open Government law is not exempt from disclosures. "All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records." See 67.21(i). "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." See 67.24(b)(1)(iii).

These specific statutory enactments prevail over any other applicable state law protection, including Cal. Govt. Code § 6254(k), pursuant to the terms of the Sunshine Ordinance and the California Public Records Act. See § 67.24 (providing "enhanced right of public access to information and records"); Cal. Govt. Code § 6253(e).

Moreover, the Task Force finds that the District Attorney's office, in dealing with the Open Government Issues covered by the complaint, is not engaged in the investigatory and prosecutorial functions of a district attorney governed by state law under Government Code § 23503, but is instead engaged in municipal functions governed by local law, including the Sunshine Ordinance. *Accord Rivero v. Superior Court*, 54 Cal. App. 4th 1048 (Cal. Ct. App. 1997).

### DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated §§67.21 (a) & (i), 67.24 (b)(1)(iii) of the Sunshine Ordinance for failure to produce records regarding communications between the City Attorney's Office and the District Attorney under the attorney-client privilege and/or work product protection. Under the Sunshine Ordinance all such communications and information are public records not exempt from disclosure. The agency shall release the records requested within 5 days of the issuance of this Order and appear before the Compliance and Amendments Committee on April 9, 2008.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 25, 2008, by the following vote: (Craven/Knee)

Ayes: Craven, Knee, Cauthen, Comstock, Chan, Goldman, Williams

Noes: Pilpel

Absent: Wolfe

Excused: Chu



Doug Comstock, Chair  
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney  
Kimo Crossman, Complaint  
Alexis Thompson, Deputy Press Secretary