

Date: April 9, 2008

Item No. 6

File No. 08013

SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST*

- Order Of Determination of: Kimo Crossman vs SOTF Administrator**
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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

DATE THE DECISION ISSUED

March 27, 2008

KIMO CROSSMAN v. SOTF ADMINISTRATOR (08013)

FACTS OF THE CASE

Kimo Crossman ("Crossman") made an Immediate Disclosure Request ("IDR") to Frank Darby, Sunshine Ordinance Task Force Administrator ("Administrator") for a copy of all e-mails sent and received by the Administrator from January 1, 2008 through February 1, 2008. The Administrator responded by providing copies of the records requested but redacting some personal e-mail addresses from the correspondence.

COMPLAINT FILED

On November 24, 2006, Crossman filed a complaint online and alleged that the Administrator impermissibly redacted e-mail addresses from the correspondence and forwarded the responsive e-mails in "bunches" rather than forwarding each in order to preserve the character of the original email.

HEARING ON THE COMPLAINT

On March 25, 2008 Complainant Kimo Crossman appeared before the Task Force and presented his claim. Respondent Agency was represented by Frank Darby, who presented the Agency's defense.

The issues in the case is whether the Agency violated Section(s) 67.1, 67.21, 67.26, 67.27 and 67.31 of the Ordinance and/or Sections 6253, 6253.9, and/or 6255 of the California Public Records Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented the Task Force finds the testimony of Kimo Crossman regarding the redaction of the e-mail addresses to be persuasive and finds that section 67.21 (a) to be applicable in this case. The Task Force does not find the testimony provided by the Agency persuasive to this case. The Task Force took no action with respect to the manner in which the e-mails were forwarded by the SOFT Administrator to Mr. Crossman.

ORDER OF DETERMINATION

Based on prior Orders of Determination where the Task Force found that e-mail addresses are, in the absence of particular circumstances showing that the submitter has a need for confidentiality (*i.e.*, a whistleblower, anonymous request) e-mail addresses are generally not exempt from disclosure under the Sunshine Ordinance. *See, e.g. 07008* ordering release of e-mail addresses; *see also Holman v. Superior Court*, 31 Med. Law Reporter 1993, 2003 Cal. App. Unpub. Lexis 6512 (2003) (unpublished) (ordering release of email addresses contained in government records); *cf. Cal. Govt. Code § 6254.3* (specifically exempting only home address and telephone numbers of state employees from disclosure under CPRA).

The Task Force finds the case law regarding protection of privacy cited by the Administrator to be factually inapposite and that there is, generally and except for limited factual circumstances indicated above, no reasonable expectation of privacy in e-mail addresses contained in governmental records.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated §67.21 (a) of the Sunshine Ordinance for failure to provide e-mail addresses. The agency shall release the e-mail addresses for the records requested within 5 business 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 / Goldman)

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

Noes: Pilpel

Excused: Chu



Doug Comstock, Chair
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney
Kimo Crossman, Complainant
Frank Darby, SOTF Administrator

