

Date: May 14, 2008

Item No. 2

File No. 08018

## SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST\*

- Order Of Determination of Kimo Crossman vs SOTF-A
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Completed by: Frank Darby

Date: May 8, 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**

April 29, 2008

*KIMO CROSSMAN v SUNSHINE TASK FORCE ADMINISTRATOR AND THE CLERK OF  
THE BOARD OF SUPERVISORS (08018)*

**FACTS OF THE CASE**

On January 25, 2008, the Sunshine Posse, a group of individuals interested in public records and public meeting issues, sent an Immediate Disclosure Request to the Clerk of the Board of Supervisors ("Clerk") and the Sunshine Ordinance Task Force Administrator ("Administrator") for all e-mails sent to or from the SOTF account or paper only documents sent to or from SOTF from January 1, 2008, to January 25, 2008. Subsequently, on February 1, 2008, the Sunshine Posse sent another request extending the period from January 26, 2008 to February 1, 2008. The Sunshine Posse asked that the documents that were paper or other medium be scanned and electronically disclosed as e-mail documents.

The Agency responded by providing approximately 40 separate e-mails containing over 300 compiled e-mails that were responsive to the request. In addition the Agency paper made copies of other documents in their existing format, relying on past practice and a narrow interpretation of the policy direction of the Board of Supervisors.

**COMPLAINT FILED**

On March 20, 2008, Kimo Crossman, on behalf of the Sunshine Posse, filed a complaint with the Sunshine Ordinance Task Force, alleging that the Clerk and Administrator violated the Sunshine Ordinance Sections 67.21-1 and 67.29-2 by refusing to scan and email, scan and fax, or scan and post the requested documents on a publicly accessible website.

On April 3, 2008, the Agency responded to the complaint that it notified the Sunshine Posse that the items were copied in paper format and were available for pick-up once payment for the cost of the medium was made. The Agency states that the documents are still available for pickup.

**HEARING ON THE COMPLAINT**

On April 22, 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.

**ORDER OF DETERMINATION**

The issue in the case is whether the Agency violated Section(s) 67.21, 67.21-1, 67.26, 67.27 and 67.29-2 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 that the Administrator should have scanned the 74 pages of paper documents, and did not give weight to arguments from the Administrator that the expenditure of time to scan and disclose as e-mail documents was greater than the time to copy and mail or arrange for pickup of requested documents. . The Task Force also found that, in light of the small number of documents at issue (74 pages) and the documents were readily accessible and easily scanned, that the request to scan and deliver the documents was reasonably practicable and should have been accommodated.

**DECISION AND ORDER OF DETERMINATION**

The Task Force finds that the Administrator violated Section(s) 67.21-1 (a) of the Sunshine Ordinance for failure to use computer systems to reduce the cost of providing public records.

The policy of the Task Force: where practicable, documents shall be scanned and disclosed electronically if requested by the requestor in an effort to reduce the cost of compliance to the requestor and the agency.

The Task Force commends the Clerk's office efforts to improve open government and urges the Clerk's office to continue moving in the direction of broader use of technology to reduce the cost and time of responding to document requests. The agency shall scan the 74 pages of records requested and e-mail the requested records to Mr. Crossman within 5 business days of the issuance of this Order and shall appear before the Compliance and Amendments Committee on May 14, 2008.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on April 22, 2008, by the following vote: (Wolfe / Knee)

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

Noes: Chu, Pilpel, Goldman

Excused: Chan



Doug Comstock, Chair / Erica Craven, Vice-chair  
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney  
Kimo Crossman  
Frank Darby  
Angela Calvillo, Clerk of the Board

