

Date: Dec. 13, 2011

Item No. 5
File No. 11056

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

- Allen Grossman v Dennis Herrera and Jack Song of the CAO**
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Completed by: Chris Rustom

Date: Dec. 9, 2011

***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
November 7, 2011

DATE THE DECISION ISSUED
October 25, 2011

*ALLEN GROSSMAN v DENNIS HERRERA & JACK SONG OF THE CITY ATTORNEY'S
OFFICE (CASE NO. 11056)*

FACTS OF THE CASE

Complainant Allen Grossman alleges that City Attorney Dennis Herrera and Jack Song, Deputy Press Secretary for the City Attorney, violated public records laws by 1) failing to fully respond to an Immediate Disclosure Request ("IDR") dated July 13, 2011, as well as the supplement to that request dated August 1, 2011 and 2) failing to respond to a request for public information dated August 1, 2011.

COMPLAINT FILED

On August 4, 2011, Mr. Grossman filed a complaint against Mr. Herrera and Mr. Song, alleging violations of Sunshine Ordinance Sections 67.21(b) and (c) and 67.22 (a) and (b) and California Public Records Act Sections 6253(b) and (c).

HEARING ON THE COMPLAINT

On October 25, 2011, Mr. Grossman presented his case to the Task Force. Mr. Song represented the City Attorney's Office ("CAO").

Mr. Grossman told the Task Force that the CAO has cut the level of service it provides to the Task Force for fiscal years 2009, 2010, and 2011 in accordance with General Fund reductions. The CAO, he said, has stated that the reductions were based on review of the services provided during each respective previous fiscal year, starting with a baseline budget established eight years ago. He said on July 13, 2011, he sent the CAO an IDR requesting a copy of that baseline budget established eight years ago; records showing which departments were included in that budget; and the baseline amounts allocated to each of those departments.

He said Mr. Song responded that copies of supporting documentation for the calculations used by the CAO to establish the baseline budget eight years ago were destroyed pursuant to the CAO's document retention policy. Mr. Song said the policy requires budget

documents to be retained for two years. Later on July 13th, Mr. Grossman said, he sent another IDR again specifically requesting the baseline budget established eight years ago. He said Mr. Song responded on July 15th asking him to clarify his request. He said he responded the same day clarifying he was requesting the baseline budget document itself.

Mr. Grossman said Mr. Song did not respond until July 20th. He told the Task Force that Mr. Song sent copies of letters that the CAO had sent to 59 General Fund departments for various fiscal years. The letters indicated how many work hours the CAO had budgeted to the various departments, but did not indicate how the hours were calculated. The numbers had to have been calculated and approved before each letter was sent off to the departments, Mr. Grossman said. The failure to preserve records showing such calculations, he added, would be a violation of the CAO's own retention policy as well as state law.

Mr. Song said Mr. Grossman asked for baseline budget figures that were used to provide General Fund departments with legal services going back eight years. Mr. Song said that data, notes, and worksheets for the baseline budget eight years ago no longer existed, and that he referred Mr. Grossman to the Controller's web site. He said he provided Mr. Grossman with information showing how much had been appropriated to the Task Force annually between 1997 and 2011. Mr. Song admitted there was a delay in his response to the IDR because he was out of the office. However, he said, he again asked Mr. Grossman if he was still asking for the same document, baseline budget figures for the General Fund departments.

He said Mr. Grossman said he was, and asked for documents that would be responsive. On July 28th, he said, Mr. Grossman asked what happened to the documents that he requested. Mr. Song said that although he had already told Mr. Grossman that the documents from eight years ago did not exist, he responded with copies of all the letters that were sent to various departments advising them of their budget allocations. Mr. Song said all calculations are based on allocations made by the Controller's Office and Mr. Grossman was directed to the Controller's website that had the information.

Mr. Song said he did not know if data, notes, and worksheets exist that support the calculation and approval of the budget for the last two years. He added that he did not know if those documents are considered privileged.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the evidence presented, including correspondence between Mr. Grossman and the CAO, the Task Force found that Mr. Grossman was seeking documentation supporting the budget allocated by the CAO to General Fund departments, including the reduced number of hours provided to the Task Force. The Task Force found compelling Mr. Grossman's reasoning that the budget allocations for each year must be calculated and approved before being presented to each department by the City Attorney, and that such calculations must be kept as a matter of course in the CAO's files. Based on Mr. Song's statements and the CAO's document retention policy, the Task Force further found supporting documentation for the budget for the last two years may exist, possibly in the form of emails, letters, notes, calculations and databases.

DECISION AND ORDER OF DETERMINATION

The Task Force finds Jack Song in violation of Section 67.25(a) for failing to respond in a timely manner to two Immediate Disclosure Requests and Section 67.21(c) for not assisting the requestor by directing him to the proper office for responsive records. The Task Force also finds City Attorney Dennis Herrera in violation of Section 67.26 for not keeping withholding to a minimum. The City Attorney is ordered, within five days of the issuance of this Order of Determination, to produce supporting documentation for the CAO's calculation of each General Fund department's budget for the last two years, and to appear before the Compliance and Amendments Committee on December 13, 2011. The Committee will evaluate the CAO's compliance with this order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on October 25, 2011, by the following vote: (Johnson/Costa)

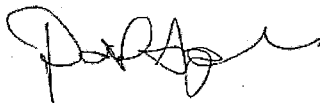
Ayes: Snyder, Knee, Washburn, Costa, Wolfe, Johnson

Excused: Cauthen

Absent: Knoebber, West, Manneh, Chan



Hope Johnson, Chair
Sunshine Ordinance Task Force



David Snyder, Esq., Member, Seat #1*
Sunshine Ordinance Task Force

- cc: Allen Grossman, Complainant
Dennis Herrera, City Attorney, Respondent
Jack Song, Deputy Press Secretary, Respondent
Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.