

Date: January 6, 2009

Item No. 6
File No. 08055

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Kimo Crossman v DTIS, SFGTV, CAO**
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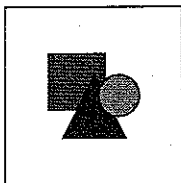
Completed by: Chris Rustom

Date: December 29, 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.



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

DIRECT DIAL: (415) 554-4236
E-MAIL: ernest.llorente@sfgov.org

MEMORANDUM

December 17, 2008

KIMO CROSSMAN v. DEPARTMENT OF TELECOMMUNICATIONS AND INFORMATION SERVICES, SAN FRANCISCO GOVERNMENT TV AND THE CITY ATTORNEY'S OFFICE (08055)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

On October 12, 2008, Kimo Crossman made an Immediate Disclosure Request ("IDR") to the San Francisco Department of Telecommunications and Information Services ("DTIS") generally and Barry Fraser and Jack Chin of DTIS requesting that DTIS e-mail to Kimo Crossman all active legislation, ordinances, procedures and motions which pertain to programming coverage by SFGTV including any goals, charters or objectives for 2008 to the present. Kimo Crossman also requested any budget information used to support these initiatives.

On October 15, 2008, Barry Fraser, Telecommunications Policy Analyst of the Department of Technology responded to the IDR in timely fashion and stated the Department of Technology conducted a thorough search and found no records which meet Kimo Crossman's request. Mr. Fraser stated that SFGTV has posted its programming policies on its website.

On October 15, 2008, Kimo Crossman responded to Barry Fraser and stated that the response is only a partial response and that he expects a complete response to his original request.

On October 17, 2008, Barry Fraser e-mailed to Kimo Crossman a spreadsheet in PDF format. On October 21, 2008, Kimo Crossman objected to the spreadsheet in PDF format and requested that it be provided in its native excel format so that the formulas could be read. On October 22, 2008, Kimo Crossman appealed to DCA Paula Jesson in her capacity of Supervisor of records for the release of the spreadsheets in its native excel format. In response to Kimo Crossman's appeal, DCA Jesson stated that she would need more time before making a determination since there was additional information that she needed from DTIS and the person most familiar with the issues was not available and is out of the office for two weeks.

Memorandum**COMPLAINANT FILES COMPLAINT**

On November 25, 2008, Crossman filed a complaint with the Sunshine Ordinance Task Force ("Task Force"), alleged that DTIS and SFGTV did not provide the spreadsheet in the original excel format and further alleged that the Supervisor of Records did not act on the appeal in a timely fashion.

JURISDICTION

Based on the allegations of the complaint and the sections of the Ordinance stated below, the Task Force has jurisdiction to hear this matter. However, there is a distinction between the complaint against DTIS and SFGTV which involves a release of a record in its native format and the complaint against the Supervisor of Records which involves a review of the operation of the Supervisor of Records as it relates to this particular case. The hearing of these complaints may be heard together or separately. The Task Force has discretion the scheduling of these hearings. DCA Jesson objects to jurisdiction as it relates to the complaint against the CAO since it is not tied in to the complaint against DTIS and SFGOVTV.

APPLICABLE STATUTORY SECTIONS:

Statutory Sections from chapter 67 of the San Francisco Administrative Code:

1. 1. Sunshine Ordinance, San Francisco Administrative Code Section 67.21 addresses general requests for public documents including records in electronic format.
2. Sunshine Ordinance, San Francisco Administrative Code Section 67.21-1 addresses the policy regarding the use and purchase of computer systems.
3. Sunshine Ordinance, San Francisco Administrative Code Section. 67.26 deals with withholding kept to a minimum.
4. Sunshine Ordinance, San Francisco Administrative Code Section. 67.27 deals with justification for withholding.
5. California Public Records Act, Government Code Section 6253.9 deal with information in an electronic format.
6. California Public Records Act, Government Code Section 6253 deals with public records open to inspection; agency duties and time limits.

APPLICABLE CASE LAW:

This case has some similarities to the case of *KIMO CROSSMAN v. GLORIA YOUNG, CLERK OF THE BOARD OF SUPERVISORS* that was heard by the Task Force on September 16, 2006. In that case the Task Force found that the Clerk of the Board violated the Sunshine Ordinance by not releasing the amendments in the original "word" format. Subsequent to the issuance of the Order of Determination. The Board of Supervisors voted to change its policy despite the advice provided by the City Attorney's Office and to release BOS records in its "word" format. However, there may be an important distinction in that the requested document

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is a financial spreadsheet and the format requested is for seeing the mathematical formula that was used to compute the numbers.

ISSUES TO BE DETERMINED

1. FACTUAL ISSUES

A. Uncontested Facts:

The parties agree to the following facts:

- Crossman submitted public records requests to DTIS.

B. Contested facts/ Facts in dispute:

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

Whether the response from DTIS was reasonable.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

none

LEGAL ISSUES/ LEGAL DETERMINATIONS:

- Were sections of the Sunshine Ordinance (Section 67.21), Brown Act, and/or Public Records Act were violated?
- Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?
- Did the Supervisor of Records comply with the time requirements of the Ordinance?

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CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS:

THE TASK FORCE FINDS THAT THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

Memorandum**THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004 PROVIDES FOR OPENNESS IN GOVERNMENT.**

Article I Section 3 provides:

- a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely to consult for the common good.
- b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
 - 2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.
 - 3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.
 - 4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided by Section 7.
 - 5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.
 - 6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committee, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions: nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE (THE SUNSHINE ORDINANCE) UNLESS OTHERWISE SPECIFIED

Section 67.1 addresses Findings and Purpose

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The Board of Supervisors and the People of the City and County of San Francisco find and declare:

- (a) Government's duty is to serve the public, reaching its decisions in full view of the public.
- (b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.
- (c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.
- (d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.
- (e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force can protect the public's interest in open government.
- (f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.
- (g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.

Section 67.21 addresses general requests for public documents.

This section provides:

- a.) Every person having custody of any public record or public information, as defined herein, ... shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish

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one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

b.) A custodian of a public record shall as soon as possible and within **ten days** (emphasis added) following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

c.) A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

...
k.) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirement provided in this ordinance.

l.) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

Section 67.21-1 addresses the City's policy regarding the use and purchase of computer systems. Section 67.21-1 provides:

a.) It is the policy of the City and County of San Francisco to utilize computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to member of the public under this section. To the extent that it is technologically and economically feasible, department that use computer systems to collect and store public records shall program and design the systems to ensure convenient, efficient, and economical public access to records and shall make public records easily accessible over public networks such as the Internet.

b.) Department purchasing new computer systems shall attempt to reach the following goals as a means to achieve lower costs to the public in connection with the public disclosure of records;

1.) Implementing a system in which exempt information is segregated or filed separately from otherwise disclosable information.

2.) Implementing a system that permits reproduction of electronic copies of records in a format that is generally recognized as an industry standard format.

3.) Implementing a system that permits making records available through the largest non-profit, non-proprietary public computer network, consistent with the requirement for security of information.

Section 67.26 provides:

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No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

Section 67.27 provides:

Any withholding of information shall be justified in writing, as follows:

- a.) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- b.) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act of elsewhere.
- c.) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- d.) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

Section 67.31 provides:

...The Clerk of the Board of Supervisors shall provide a full-time staff person to perform administrative duties for the Sunshine Ordinance Task Force and to assist any person in gaining access to public meetings or public information. The Clerk of the Board of Supervisors shall provide that staff person with whatever facilities and equipment are necessary to perform said duties.

The California Public Records Act is located in the state Government Code Sections 6250 et seq. All statutory references, unless stated otherwise, are to the Government Code.

Section 6253 provides.

- a.) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the records after deletion of the portions that are exempted by law.
- b.) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

Memorandum

c.) Each agency, upon a request for a copy of records, shall within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefore....

Section 6253.9 provides:

a.) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in any electronic format.

b.) Notwithstanding paragraph (2) of subdivision a.), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision a.), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

c.) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

d.) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

e.) Nothing in this section shall be construed to permit an agency to make information available only in electronic format.

f.) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

g.) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

Section 6255 provides:

a.) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

b.) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.

Memorandum



<complaints@sfgov.org>
11/26/2008 03:30 PM

To: <sotf@sfgov.org>
cc
bcc
Subject: Sunshine Complaint

History: This message has been forwarded.

Submitted on: 11/26/2008 3:30:26 PM

Department: City Attorney, DTIS, SFGTV

Contacted: Jack Chin, Barry Fraiser, Ron Vinson, Paula Jesson

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date: N/A

Section(s) Violated: 67.21(b), (d), (1), 67.21-1, 67.29-2, 6253(b) "Exact Copy," 6253.9

Description: Requested original document - Spreadsheet, only PDF version provided. Appealed to Supervisor of Records requiring response in 7 days - not provided.

Hearing: Yes

Date: 11/25/08

Name: Kimo Crossman

Address:

City:

Zip:

Phone:

Email: Kimo@webnetic.net

Anonymous:

Confidentiality_Requested: No



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

11/25/2008 07:24 AM

Please respond to
kimo@webnetic.net

To "Paula Jesson" <Paula.Jesson@sfgov.org>, SOTF
<soft@sfgov.org>, Pro-SF <home@prof.org>, "Allen
Grossman" <grossman356@mac.com>, "Jack Chin"

cc

bcc

Subject COMPLAINT OVERDUE: APPEAL OVERDUE PDF of
SFGTV Spreadsheet - Unlawful redaction of formulas

Please include the below email chain, images and attachments in the file for this complaint.

Submitted on: 11/25/08

Department: City Attorney, DTIS, SFGTV

Contacted: Jack Chin, Barry Fraiser, Ron Vinson, Paula Jesson,

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date: N/A

Section(s)_Violated: 67.21 (b), 67.21 (d), 67.21 (L), 67.29-2, 67.21-1, 6253 (b) "Exact Copy",
6253.9

Description:

Requested original document - Spreadsheet, only PDF version provided. Appealed to Supervisor
of records requiring response in 7 days - not provided.

Hearing: Yes

Date: 11/25/08

Name: Kimo Crossman

Email: kimo@webnetic.net

On Tue, Nov 18, 2008 at 11:42 AM, kimo <kimo@webnetic.net> wrote:

On Wed, Nov 12, 2008 at 10:52 AM, Paula Jesson <Paula.Jesson@sfgov.org> wrote:

Dear Mr. Crossman,

Before making a determination on your petition, there is additional information that I need from DTIS. The person most familiar with the issues relating to it had been busy with other matters and is now out of the office and will not be back for two weeks. I will obtain the information that I need when he returns and respond at that time.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
email: paula.jesson@sfgov.org

kimo
<kimo@webnetic.net>
To
Sent by: "Paula Jesson"
kimocrossman@gmail.com <Paula.Jesson@sfgov.org>, "Kimo
l.com Crossman" <kimo@webnetic.net>,
"home@prosf.org" <home@prosf.org>
cc
11/07/2008 02:53
AM Subject
APPEAL OVERDUE PDF of SFGTV
Spreadsheet - Unlawful redaction of
Please respond to formulas
kimo@webnetic.net

On Tue, Oct 28, 2008 at 7:16 AM, kimo <kimo@webnetic.net> wrote:
Not Rocket Science here....

On Fri, Oct 24, 2008 at 11:37 AM, Paula Jesson <Paula.Jesson@sfgov.org>
wrote:

This acknowledges receipt of your appeal.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
email: paula.jesson@sfgov.org

"Kimo Crossman"
<kimo@webnetic.net>

▷

To

"Paula Jesson"

10/22/2008 07:28 <Paula.Jesson@sfgov.org>

PM

cc

<home@prosf.org>, "Allen
Grossman" <grossman356@mac.com>

Subject

APPEAL PDF of SFGTV Spreadsheet -
Unlawful redaction of formulas

Ms. Jesson,

SFGTV has unlawfully refused to provide the excel format version of the spreadsheet attached. Would you please work to obtain its release?

There

is no authority provided by the CA to redact formulas in spreadsheets

what

happens when conversion to PDF occurs – the CA PDF memo only relates to Word documents.

Thank you

From: Kimo Crossman [mailto:kimo@webnetic.net]

Sent: Tuesday, October 21, 2008 6:50 PM

To: 'Barry Fraser'; 'Jack Chin'; 'Thomas Long'; 'dtis@sfgov.org'

Subject: PDF of SFGTV Spreadsheet - Unlawful redaction of formulas

Importance: High

As previously indicated there is no authority provided by the CA to redact formulas in spreadsheets – the PDF memo only relates to Word documents.

Please provide the spreadsheet in excel format of the PDF previously provided

----- Message from "Barry Fraser" <Barry.Fraser@SFGOV.ORG> on Fri, 17

Oct

2008 16:44:00 -0700 -----

To: "Kimo Crossman" <kimo@webnetic.net>

cc: "Jack Chin" <Jack.Chin@sfgov.org>, "Ron Vinson" <Ron.Vinson@sfgov.org>

Subject: RE: OVERDUE: Immediate Disclosure Request - SFGTV programming

Mr. Crossman,

Attached is a document that responds to your request. The Department of Technology has identified no other documents that respond to your request.

Barry Fraser
Telecommunications Policy Analyst
City and County of San Francisco
Department of Technology
One South Van Ness, 2nd Floor
San Francisco, CA 94103

Phone: 415-581-3976
Fax: 415-581-3970
barry.fraser@sfgov.org

"Kimo Crossman"
<kimo@webnetic.net>

To

10/17/2008 10:21 AM
"Barry Fraser" <Barry.Fraser@SFGOV.ORG>, <home@prosf.org>

cc

"Jack Chin" <Jack.Chin@sfgov.org>, "SFGTV" <sfgtv@sfgov.org>, "Thomas Long" <Thomas.Long@sfgov.org>, "Ron Vinson" <Ron.Vinson@sfgov.org>, <dtis@sfgov.org>

Subject

RE: OVERDUE: Immediate Disclosure Request - SFGTV programming

From: Kimo Crossman [mailto:kimo@webnetic.net]
Sent: Thursday, October 16, 2008 7:03 PM
To: 'Barry Fraser'; 'home@prosf.org'
Cc: 'Jack Chin'; 'SFGTV'; 'Thomas Long'; 'Ron Vinson'; 'dtis@sfgov.org'
Subject: RE: OVERDUE: Immediate Disclosure Request - SFGTV programming

???

From: Kimo Crossman [mailto:kimo@webnetic.net]
Sent: Wednesday, October 15, 2008 10:43 PM
To: 'Barry Fraser'; 'home@prosf.org'
Cc: 'Jack Chin'; 'SFGTV'; 'Thomas Long'; 'Ron Vinson'; 'dtis@sfgov.org'
Subject: RE: OVERDUE: Immediate Disclosure Request - SFGTV programming
Importance: High

Thank you for that link and I hope you had a nice day off

I need more information this is only a very partial response – for example it does not describe the legislation, motions enacting SFGTV actions it also does not describe the actual budget for the requested period and lastly it does not describe why the Taxi Commission for example would have coverage but not Ethics Commission or SOTF.

I request a complete response to my original question with daily incremental updates.

From: Barry Fraser [mailto:Barry.Fraser@SFGOV.ORG]
Sent: Wednesday, October 15, 2008 4:33 PM
To: Kimo Crossman
Cc: 'Jack Chin'; 'SFGTV'; 'Thomas Long'; 'Ron Vinson'
Subject: Re: OVERDUE: Immediate Disclosure Request - SFGTV programming

Mr. Crossman,

The Department of Technology has conducted a thorough search and found no

records which meet your request. SFGTV has posted programming policies on its web site at:
http://www.sfgov.org/site/sfgtv_index.asp?id=11468#programming_policies

Please note that Monday October 13, 2008 was a City holiday, so this response falls within the IDR time frame.

Barry Fraser
Telecommunications Policy Analyst
City and County of San Francisco
Department of Technology
One South Van Ness, 2nd Floor
San Francisco, CA 94103

Phone: 415-581-3976
Fax: 415-581-3970
barry.fraser@sfgov.org

"Kimo Crossman"
<kimo@webnetic.net>

To
10/15/2008 08:39 AM ""SFGTV"" <sfgtv@sfgov.org>, ""Barry Fraser""

<Barry.Fraser@SFGOV.ORG>, ""Jack Chin""
<Jack.Chin@sfgov.org>

cc

<home@prof.org>, ""Thomas Long""
<Thomas.Long@sfgov.org>, <dtis@sfgov.org>

Subject

OVERDUE: Immediate Disclosure Request -

SFGTV

programming

From: Kimo Crossman [mailto:kimo@webnetic.net]
Sent: Sunday, October 12, 2008 2:51 PM
To: 'SFGTV'; 'Barry Fraser'; 'Jack Chin'
Cc: 'home@prosf.org'; 'Allen Grossman'; 'Thomas Long';
[REDACTED]'; 'Joe Lynn';
[REDACTED]'; 'James Chaffee'; [REDACTED]';
Subject: Immediate Disclosure Request - SFGTV programming
Importance: High

Immediate Disclosure Request

Please email to me all active: legislation, ordinances, procedures and motions which pertain to programming coverage by SFGTV including any goals, charters or objectives for 2008 to present. For example, this should include information about why the BOS receives SFGTV coverage but Ethics Commission does not but the Taxi Commission does. You may exclude the amendment to the Sunshine Ordinance pertaining to digital recordings in City Hall. Also please include any budget information used to support these initiatives – for example Staff, bandwidth and equipment..

Please provide information on a daily incremental basis, in native electronic format or scanned PDF if only exists in paper format.

Please contact me if this request needs need clarification – This request should be read broadly and exemptions narrowly.

(See attached file: 2009sfgtv.pdf)



DENNIS J. HERRERA
City Attorney

PAULA JESSON
Deputy City Attorney

DIRECT DIAL: (415) 554-6762
E-MAIL: paula.jesson@sfgov.org

December 3, 2008

Honorable Members
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

Re: Complaint #08055- Kimo Crossman v. CA, DTIS, SFGTV

Dear Members of the Sunshine Ordinance Task Force:

Kimo Crossman alleges a violation of the Sunshine Ordinance by the City Attorney's Office in its capacity as Supervisor of Records. This office disputes jurisdiction insofar as the complainant asks that the Task Force consider the matter as a complaint under Section 67.21(e) of the Sunshine Ordinance.

The jurisdiction of the Task Force over the complaint against the City Attorney's Office does not arise under Section 67.21(e), the provision that gives the Task Force jurisdiction over a complaint regarding the withholding of all or a portion of a public record by a City department. Rather, Mr. Crossman's complaint against this office is that the Supervisor of Records has not complied with the time requirement for responding to petitions filed with the Supervisor of Records under Section 67.21(d). The jurisdiction of the Task Force therefore rests on provisions other than Section 67.21(e), presumably its more general oversight responsibility regarding the operation of the Sunshine Ordinance.

Because this is not a complaint arising under Section 67.21(e), we suggest that the Task Force schedule a hearing on this matter at the same time that it hears the annual report presented by the Supervisor of Records. We expect to transmit the Ninth Annual Supervisor of Records Report to the Task Force within the next few weeks. Scheduling a hearing on both matters at the same hearing would be an efficient use of the resources of both of our offices and would allow the Task Force to consider Mr. Crossman's complaint within the context of the various petitions that he filed with the Supervisor of Records during the time period covered by the report.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Paula Jesson
Deputy City Attorney



kimo <kimo@webnetic.net>

Sent by:
kimocrossman@gmail.com

12/03/2008 12:20 PM

Please respond to
kimo@webnetic.net

To "Paula Jesson" <Paula.Jesson@sfgov.org>, SOTF
<sof@sfgov.org>, Cityattorney <cityattorney@sfgov.org>,
"Matt Dorsey" <Matt.Dorsey@sfgov.org>, "Kristin Murphy
"Allen Grossman" <grossman356@mac.com>, "Christian
cc Holmer" <mail@csrsf.com>, "Ernest Llorente"
<Ernest.Llorente@sfgov.org>

bcc

Subject Fwd: Sunshine Complaint Received: #08055_Kimo
Crossman v CA, DTIS, SFGTV

I do not agree with the suggestion by the Supervisor of Records for a special hearing on this matter.

This is a simple matter that should have been resolved long ago, it should go through the normal SOTF procedures. If it happens to occur at the same full meeting as the Supervisor of Records report then so be it.

The Supervisor does not dispute jurisdiction under Sunshine on this matter only which provisions are applicable. Additionally DTIS/SFGTV has provided no response on this matter since parties have waived a Complaint meeting hearing this matter can go to the Full Taskforce at the next meeting.

Paula
Jesson/CTYATT@CTYATT
12/03/2008 12:23 PM

To kimo@webnetic.net
Ron Vinson/DTIS/SFGOV@SFGOV, Barry
cc Fraser/DTIS/SFGOV@SFGOV, Jack
Chin/DTIS/SFGOV@SFGOV, SOTF/BOS/SFGOV@SFGOV
bcc
Subject Petition to Supervisor of Records - Spreadsheet in Excel
Format

Dear Mr. Crossman,

On October 22, 2008, you submitted a petition to the Supervisor of Records regarding your request to the Department of Technology for records "which pertain to programming coverage by SFGTV including any goals, charters or objectives for 2008 to present . . . Please provide information . . . in native electronic format or scanned PDF if only [sic] exists in paper format."

In response to your request, the Department of Technology provided you with a spreadsheet in PDF. Your petition to the Supervisor of Records states:

"SFGTV has unlawfully refused to provide the excel format version of the spreadsheet attached. Would you please work to obtain its release? There is no authority provided by the CA to redact formulas in spreadsheets what [sic] happens when conversion to PDF occurs - the CA PDF memo only relates to Word documents."

Your statement that "the CA PDF memo only relates to Word documents" is presumably a reference to an opinion by the City Attorney's Office of September 19, 2006 and a follow-up letter of August 11, 2008 advising that a City department has discretion under the California Public Records Act and the Sunshine Ordinance to provide an electronic record in response to a public records request in PDF rather than Word format. The reasoning of that opinion applies to a spreadsheet in Excel format. An Excel spreadsheet, like a Word document, may have "metadata" that a department is either permitted or legally required to withhold from public disclosure. In addition, like a Word document, the text of an Excel spreadsheet may be subject to alteration. Therefore, the basis for concluding that a department may decline to produce a Word document applies as well to an Excel spreadsheet

It is my understanding based on information provided by the Department of Technology that a requester may want an Excel spreadsheet other than in PDF in order to understand the formulas that the department uses in the spreadsheet. Formulas in spreadsheets can range from simple addition to complex calculations. As the author inserts numbers (for example, to calculate interest payments due), the Excel program calculates the conclusion based on the formula. The author can insert revised numbers (for the interest rate or number of months paid) and obtain a revised calculation, based on the same formula.

Again, based on information provided by the Department of Technology, I understand that another reason that a requester may want an Excel spreadsheet is to import and place data from the spreadsheet, which is arranged in rows and columns, into another program. A method of allowing text from an Excel spreadsheet to be imported into another program, so that the grid-like layout is retained, is to convert the Excel spreadsheet to "tab delimited format."

I am informed that the Department of Technology has no objection to providing you with a brief written description of the formula used in the spreadsheet or transmitting the spreadsheet to you in tab delimited format.

Please let Barry Fraser of the Department of Technology know if you want either a brief written description of the formula used in the spreadsheet or to obtain the spreadsheet in tab delimited format.

In light of the reasoning of the prior opinion of the City Attorney's Office, and in light of the Department of Technology's having provided you with the spreadsheet that you requested in PDF, and its willingness to

provide the additional information described above, the Supervisor of Records denies your petition.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
email: paula.jesson@sfgov.org



kimo <kimo@webnetic.net>

Sent by:
kimocrossman@gmail.com

12/03/2008 12:46 PM

Please respond to
kimo@webnetic.net

To "Paula Jesson" <Paula.Jesson@sfgov.org>
"Ron Vinson" <Ron.Vinson@sfgov.org>, "Barry Fraser"
cc <Barry.Fraser@sfgov.org>, "Jack Chin"
<Jack.Chin@sfgov.org>, SOTF <soft@sfgov.org>

bcc

Subject Re: Petition to Supervisor of Records - Spreadsheet in Excel
Format

Ms. Jesson

I request the detailed formulas (not brief description) from SFGTV/DTIS of the spreadsheet

I also request the tab delimited version of the spreadsheet

Production of this information is significantly overdue - that means the petition is upheld not denied.

Additionally I request the original copy of the spreadsheet.

6253 (b) provides for an exact copy of the original
6453.9 is applicable
67.21 (L) provides for format requested
67.21-1 is applicable

The Sunshine taskforce has issued numbers rulings on this matter and even referred departments to Ethics for Official Misconduct for refusal to provide this information.

Please explain why these provisions are not applicable, what is the public interest in withholding this particular spreadsheet?

67.20 (b) "Public Information" shall mean the content of "public records" as defined in the California Public Records Act (Government Code Section 6252), whether provided in documentary form or in an oral communication. "Public Information" shall not include "computer software" developed by the City and County of San Francisco as defined in the California Public Records Act (Government Code Section 6254.9).

6252 (g) "Writing" means any handwriting, typewriting, printing,

photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including

letters, words, pictures, sounds, or symbols, or combinations

thereof, and any record thereby created, regardless of the manner in which the record has been stored.

And according to the legislative history of CPRA:

This definition is intended to cover **every conceivable kind of record that is involved in the government process...** Only purely personal information unrelated to "the conduct of the public's business" could be considered exempt from this definition, i.e., the shopping list phoned from home, the letter to a public officer from a friend which is totally void of reference to governmental activities (*Assembly Comm. on Statewide Information Policy, Appendix I to Journal of Assembly (1970 Reg. Sess.) Final Report p. 9*)

Besides the broad application towards disclosure under Prop 59, the Public's Business is broadly construed and rarely contested (*California State University v. Superior Court, 90 Cal.App. 4th 810, 824-25 (2001)*; *San Gabriel Tribune v. Superior Court 143 Cal. App. 3d 762, 774(1983)*).

6253

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

67.21

(l) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

6253.9. (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an

electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

(c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

(e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

SEC. 67.21-1. POLICY REGARDING USE AND PURCHASE OF COMPUTER SYSTEMS.

(a) It is the policy of the City and County of San Francisco to utilize computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this section. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall program and design these systems to ensure convenient, efficient, and economical public access to records and shall make public records easily accessible over public networks such as the Internet.

(b) Departments purchasing new computer systems shall attempt to reach the following goals as a

means to achieve lower costs to the public in connection with the public disclosure of records:

- (1) Implementing a computer system in which exempt information is segregated or filed separately from otherwise disclosable information.
- (2) Implementing a system that permits reproduction of electronic copies of records in a format that is generally recognized as an industry standard format.
- (3) Implementing a system that permits making records available through the largest non-profit, non-proprietary public computer network, consistent with the requirement for security of information.



kimo <kimo@webnetic.net>

Sent by:

kimocrossman@gmail.com

12/03/2008 03:32 PM

Please respond to
kimo@webnetic.net

To "Paula Jesson" <Paula.Jesson@sfgov.org>

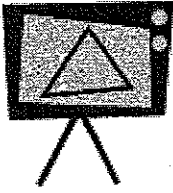
"Ron Vinson" <Ron.Vinson@sfgov.org>, "Barry Fraser"
cc <Barry.Fraser@sfgov.org>, "Jack Chin"

<Jack.Chin@sfgov.org>, SOTF <sotf@sfgov.org>, "Allen

bcc

Subject Re: Petition to Supervisor of Records - Spreadsheet in Excel
Format

Also please be notified that the memo regarding Word to PDF by Mr. Zarefsky is not a properly vetted opinion following the procedures of the City Attorney and signature by Mr. Herrera




Barry Fraser/DTIS/SFGOV

12/03/2008 04:51 PM

To kimo@webnetic.net

"Jack Chin" <Jack.Chin@sfgov.org>,
cc kimocrossman@gmail.com, "Paula Jesson"
<Paula.Jesson@sfgov.org>, "Ron Vinson"

bcc

Subject Re: Petition to Supervisor of Records - Spreadsheet in Excel
Format 

Mr. Crossman,

Attached is the tab-delimited spreadsheet you requested.

The formulas used in the spreadsheet in Columns A, C and E on lines 23, 36, 37, 40, 46, 51, 54, 60, 83, 86, 93, 98, 103, 120, 125, 126, 131, 132 are all simple roll up sums of the lines above. There are no additional formulas used in any of the calculation.

DEPARTMENT OF TELECOMMUNICATIONS & INFORMATION SERVICES

~2525308.TXT

DIVISION: SFGTV

FISCAL YR: 2008 - 2009

Index Code: 750053

PROGRAM BK4

FUND AAA

FAMIS PROJECT CODE None

DTIS PROJECT CODE "953CTW, 953REP, Various PT"

MANAGER JACK CHIN

Closed Captioning Services

Object Code	Subobject	Object Code/Subobject	Code Title	A	B	C	D	E	Vendor	Project Code	Reference	FY09 Phase D		
FY09 Budget	Modification	FY09 Revised Budget	"Actual	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY
Expenses	Budget Variance	Notes	Budget Mod #											
001	00100	Permanent salaries		9.7		9.7		#REF!		"682,738 "		"682,738 "		
005	00500	Temp salaries		1.08		1.08		#REF!		"82,821 "		"82,821 "		
009	00900	Premium Pay								0	"1,507 "		"1,507 "	
011	01100	Overtime								0	"6,000 "		"6,000 "	
Total Salary										0	"773,066 "		"773,066 "	
0										0	"34,069 "		"34,069 "	
013	01301	RETIRE CITY MISC								0	"34,069 "		"34,069 "	


```

013 01379 RETIREMENT PICKUP (PREM/OTHER ADJUSTMENT) ~2525308.txt
014 01401 SOCIAL SECURITY (OASDI) "45,451 " (57) 0 (57) 0 (57)
014 01402 SOCIAL SECURITY - MEDICARE (HI ONLY) "11,212 " "45,451 " 0 "45,451 "
015 01501 HEALTH SERVICE-CITY MATCH "50,452 " "11,212 " 0 "11,212 "
015 01561 HEALTH SERVICE-SUBSIDY 0 "50,452 " 0 "50,452 "
015 01571 DEPENDENT COVERAGE-MISCELLANEOUS 0 0 0 0
016 01601 DENTAL COVERAGE "12,452 " "45,996 " 0 "45,996 "
017 01701 UNEMPLOYMENT INSURANCE 774 774 0 "12,452 "
019 01901 FRINGE ADJUSTMENTS-BUDGET 0 0 0 0
019 01911 FLEXIBLE BENEFIT PACKAGE "2,907 " "2,907 " 0 "2,907 "
019 01912 LONG TERM DISABILITY INSURANCE "3,389 " "3,389 " 0 "3,389 "

Total Fringe 0 0 0 "206,645 " "206,645 " 0 "206,645 "
Total Salaries & Fringe 0 0 0 "979,711 " "979,711 " 0 "979,711 "
020 02001 Indirect Cost Reimbursement 953CTW 0 "125,675 " "125,675 " 0 "125,675 "

020 020XX COWCAP 0 0 "125,675 " "125,675 " 0 "125,675 "
021 02102 Travel Cost Paid to Vendors 0 0 "4,000 " "4,000 " 0 "4,000 "
021 02102 Travel Cost Paid to Vendors 600 600 "600 " "600 " 0 "600 "
021 02102 Travel Cost Paid to Vendors 200 200 "200 " "200 " 0 "200 "
021 02102 Travel Cost Paid to Vendors (960) (960) 0 (960)

021 021XX Travel 0 0 "3,840 " "3,840 " 0 "3,840 "
022 02200 Training BAVC (Bay Area Video Coalition) 0 0 "5,000 " "5,000 " 0 "5,000 "
022 02200 Training Natoa registration 953CTW "2,000 " "2,000 " 0 "2,000 "

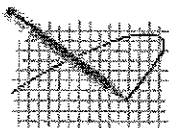
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Account Number	Description	Amount	Account Number	Description	Amount	Account Number	Description	Amount	Account Number	Description	Amount
022	022XX Training	0	"(1,050)"	~2525308.txt	0	"(1,050)"	0	"(1,050)"			
023	02300 Employee Field Expenses Budget	0	"5,950 "		0	"5,950 "	0	"5,950 "			
023	02300 Employee Field Expenses Budget	0	953CTW	25	0	953CTW	25	0	25		
023	023XX Employee Expenses	0	0	25	0	0	25	0	25		
024	02400 Membership Fees Conference	0	Media Alliance (conference)	0	0	953CTW	125	0	125		
024	02400 Membership Fees	0	Scan Natoa	200	0	953CTW	200	0	200		
024	02400 Membership Fees Group Membership	0	Natoya	500	0	500	0	0	500		
024	02400 Membership Fees Miscellaneous	0	953CTW	175	0	175	0	175			
024	024XX Membership Fees	0	"1,000 "	0	"1,000 "	0	"1,000 "	0	"1,000 "		
027	02761 Systems Consulting services	0	Video Streaming Granicus	0	953CTW	0	"32,000 "	0	"32,000 "		
027	02761 "Other Professional Services	1,100	Captioning Services - City Attorney	TBD	TBD	117CTW	1,100		1,100		
027	02761 "Other Professional Services	1,100	Captioning Services - Planning Commission	TBD	TBD	119CTW	1,100		1,100		
027	02761 "Other Professional Services	34,320	Captioning Services - Mayor's Office	TBD	953CTW	34,320			34,320		
027	02761 "Other Professional Services	10,000	Captioning Services - Mayor's Office	TBD	953CTW	10,000			10,000		
027	02761 "Other Professional Services	16,632	Captioning Services - Police Commission	TBD	161CTW	16,632			16,632		
027	02761 "Other Professional Services	5,676	Captioning Services - Police Commission Remote	TBD	161CTW	5,676			5,676		
027	02761 "Other Professional Services	1,320	Captioning Services - Mayor's Disaster Council	TBD	162CTW	1,320			1,320		
027	02761 "Other Professional Services	10,560	Captioning Services - Taxi Cab Commission	TBD	163CTW	10,560			10,560		
027	02761 "Other Professional Services	1,980	Captioning Services - Public Defender	TBD	165CTW	1,980			1,980		
027	02761 "Other Professional Services	1,980	Captioning Services - Local Agency Formation Commission	TBD	181CTW	1,980			1,980		

027	02761	Other Professional Services	Captioning Services - BOS Meetings	TBD	953CTW	"72,000 "	"72,000 "
027	0	72,000					
027	02761	Other Professional Services	Captioning Services - Mayor's Disability Council	TBD	TBD	221CTW	"4,620 "
027	0	4,620					
027	02761	Other Professional Services	Captioning Services - Small Business Commission	TBD	229CTW	"3,960 "	"3,960 "
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027	02761	Other Professional Services	Captioning Services - Building Inspection Commission	TBD	TBD	415CTW	"5,280 "
027	0	5,280					
027	02761	Other Professional Services	Captioning Services - DBI video production programs	TBD	TBD	415CTW	"3,300 "
027	0	3,300					
027	02761	Other Professional Services	Captioning Services - Board of Education	TBD	611CTW	"13,200 "	"13,200 "
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027	02761	Other Professional Services	Captioning Services - Transportation Authority	TBD	622CTW	"7,920 "	"7,920 "
027	0	7,920					
027	02761	Other Professional Services	Captioning Services - Transbay Joint Powers Authority	TBD	TBD	623CTW	"3,960 "
027	0	3,960					
027	02761	Other Professional Services	Captioning Services - Public Utilities Commission	TBD	TBD	726CTW	"11,880 "
027	0	11,880					
027	02761	Other Professional Services	Captioning Services - Municipal Transportation Agency	TBD	TBD	735CTW	"10,560 "
027	0	10,560					
027	027XX	Professional & Specialized Services		0	0	0	0
029	02900	Budget Equipment Maintenance		0	953CTW	"265,294 "	"265,294 "
029	0	0					
029	029XX	Maintenance Svcs-Equipment		0	0	0	0
035	03521	Freight/Delivery		0	953CTW	150	150
035	03551	Copy Machine		0	0	0	0
035	03596	Software License Fees		0	953CTW	"1,000 "	"1,000 "
035	0	0					

035	03596	Software License Fees	Avid Express Pro	~2525308.txt	953CTW	"1,538 "	"1,538 "	0	"1,538 "
035	03599	other Current Expenses	Alhambra	953CTW	0	0	0	0	0
035	035XX	Other Current Expenses		0	0	0	0	0	0
040	04000	Materials/supplies	Budget - Contingency	"5,208 "	0	"5,208 "	0	"5,208 "	0
040	04950	Office Supplies - Citywide Contract	Office Depot	953CTW	0	"2,000 "	0	"2,000 "	0
040	"1,051 "	Office Supplies	"Audio & Video Tapes, sleeves"	CALIFORNIA MEDIA SOLUTION	953CTW	"1,051 "	0	"1,051 "	0
040	04951	other Office Supplies		"10,000 "	953CTW	"10,000 "	0	"10,000 "	0
"10,000 "									
040	040XX	Materials & Supplies		0	0	0	0	0	0
081	081CB	Insurance & Risk Reductions		"13,051 "	0	"13,051 "	0	"13,051 "	0
081	081CI	IS - CITY WIDE INFRASTRUCTURE (AAO)		953CTW	0	"5,150 "	0	"5,150 "	0
081	081PR	Reproduction	953REP	"1,839 "	0	"1,839 "	0	"1,839 "	0
081	081XX	Services of Other Departments		0	0	0	0	0	0
086	086AD	Admin svcs budget	Disability Counsel office	0	0	0	0	0	0
"(14,089)"				221CTW	0	"(14,089)"	0	"(14,089)"	0
086	086BD	Board of Supv	To cover meetings and for Local Agency Formation Comm	181CTW	0	"(9,795)"	0	"(9,795)"	0
"(9,795)"									
086	086BE	Economic & workforce Development	Office of Small Business Affairs	229CTW	0	"(14,901)"	0	"(14,901)"	0
"(14,901)"									
086	086BI	Building Inspection		415CTW	"(60,604)"	0	"(60,604)"	0	"(60,604)"
086	086CP	City Planning	City Planning Commission	119CTW	"(107,262)"	0	"(107,262)"	0	"(107,262)"
"(107,262)"									
086	081CT	City Attorney		117CTW	"(4,025)"	0	"(4,025)"	0	"(4,025)"
086	086EV	Environment		227CTW	"(19,955)"	0	"(19,955)"	0	"(19,955)"
086	086MT	MTA - Municipal Railway			"(36,611)"	0	"(36,611)"	0	"(36,611)"
086	086MY	Mayor's Office	Mayor's Townhall Meeting	151CTW	"(12,500)"	0	"(12,500)"	0	"(12,500)"



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37OCTW "14,256 " ~2525308.txt
415CTW "8,580 "
611CTW "13,200 "
622CTW "7,920 "
623CTW "3,960 "
728CTW "11,880 "
735CTW "10,560 "
      "1,045,278 "
```



Barry Fraser/DTIS/SFGOV

12/23/2008 04:26 PM

To SOTF/SOTF/SFGOV@SFGOV
cc Paula Jesson/CTYATT@CTYATT, Ron
Vinson/DTIS/SFGOV@SFGOV, Jack
Chin/DTIS/SFGOV@SFGOV, Thomas
bcc

Subject Department of Technology Supporting Documents:
#08055_Kimo Crossman v CAO, DTIS, SFGTV 

The Department of Technology submits the attached letter and attachments supporting our position in the above-referenced proceeding.

Barry Fraser
Telecommunications Policy Analyst
City and County of San Francisco
Department of Technology
One South Van Ness, 2nd Floor
San Francisco, CA 94103
Phone: 415-581-3976
Fax: 415-581-3970
barry.fraser@sfgov.org

-----SOTF/SOTF/SFGOV wrote: -----

To: kimo@webnetic.net, Paula Jesson/CTYATT@CTYATT, Ron Vinson/DTIS/SFGOV@SFGOV, Barry Fraser/DTIS/SFGOV@SFGOV, Jack Chin/DTIS/SFGOV@SFGOV
From: SOTF/BOS/SFGOV
Sent by: SOTF/SOTF/SFGOV
Date: 12/19/2008 03:00PM
Subject: DCA Instructional Letter: #08055_Kimo Crossman v CAO, DTIS, SFGTV

Attached is a copy of the Deputy City Attorney's Instructional Letter to the Task Force.

As a reminder this complaint will be heard by the Sunshine Ordinance Task Force on

When: Tuesday, January 6, 2009
Where: City Hall, Room 408
Time: 4:00 PM

The regularly scheduled meeting for December 23, 2008, is cancelled.

Chris Rustom
Asst. Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
OFC: (415) 554-7724
FAX: (415) 554-7854

SOTF@sfgov.org

[attachment "08055_CA Instructional.pdf" removed by Barry Fraser/DTIS/SFGOV]

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DT Support Letter SOTF # 08055.pdf Attachment 6 -Supervisor of Records Opinion 12-03-08.pdf



Attachment 1 -Email resp 10-17-08.pdf Attachment 2 -2009sfgtv.pdf Attachment 3 -Email resp 12-03-08.pdf



Attachment 4 -SFGTV 750053.txt Attachment 5 -DCAOpinion09-19-06.pdf



Chris Vein
Chief Information Officer
Telephone: (415) 581-4001

December 23, 2008

Honorable Members of the Sunshine Ordinance Task Force
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Subject: Complaint No. 08055 – Kimo Crossman v. CA, DTIS, SFGTV

Dear Task Force Members:

The Department of Technology ("DT") submits this memorandum in support of its position regarding Complaint No. 08055. DT has provided the Complainant, Kimo Crossman, with records sufficient to meet the standards of the Sunshine Ordinance, and therefore requests that the Complaint be denied.

Specifically, DT has provided the requested record in both PDF format and as a delimited text file, along with a description of the formulae used to create summations of relevant rows and columns, (See Attachments 1-4) but has declined to provide the record as a Windows Excel format. We have declined to provide the record in Excel format out of concerns that the disclosure might release some metadata that might be confidential and protected from disclosure, and might make the record susceptible to manipulation or editing that may affect the integrity of the original record. DT refers the Task Force to a City Attorney opinion dated September 19, 2006 and written by Deputy City Attorney Paul Zarefsky, as well as the recommendations of the Supervisor of Records opinion dated December 3, 2008 and written by Deputy City Attorney Paula Jesson. Both of these documents are attached.

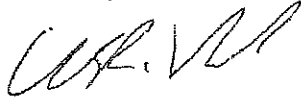
DT believes that the arguments set forth in the City Attorney Opinion, although specifically discussing the Microsoft Word format, apply with equal or greater force to the Excel format. Excel Documents often contain sensitive metadata, just as Word documents. In addition, the Excel format is even more susceptible to editing or manipulation than the Word format. For example, changing numbers in a range of cells can be accomplished much more easily, and with less evidence of alteration, than with a Word document. In addition, minor changes to numbers in a spreadsheet can result in major alterations to these reports, and such alterations are virtually impossible to detect. Therefore, we believe the concern over preserving the integrity of the document is even greater with respect to Excel documents.

The attached Supervisor of Records report also supports the conclusion that the original City Attorney Opinion should apply to the Excel format. As that report indicates, DT has already provided the data contained in this record as a delimited text file, which allows the requester to copy and manipulate the data, without compromising the integrity of the original document. We

have also provided descriptions of formulae used within this spreadsheet. Previously, the department provided the Complainant with a PDF version of the document as well.

DT therefore believes that the Department has fully complied with the requirements of the Sunshine Ordinance and California Public Records Act and that Complaint No. 08055 should be denied.

Sincerely,



Ron Vinson
Media Director
Department of Technology

Enclosures

From: Barry Fraser/DTIS/SFGOV
To: "Kimo Crossman" <kimo@webnetic.net>
cc: Jack Chin/DTIS/SFGOV@SFGOV, Ron Vinson/DTIS/SFGOV@SFGOV

Date: Friday, October 17, 2008 04:44PM
Subject: RE: OVERDUE: Immediate Disclosure Request - SFGTV programming

Mr. Crossman,

Attached is a document that responds to your request. The Department of Technology has identified no other documents that respond to your request.

Barry Fraser
 Telecommunications Policy Analyst
 City and County of San Francisco
 Department of Technology
 One South Van Ness, 2nd Floor
 San Francisco, CA 94103

Phone: 415-581-3976
 Fax: 415-581-3970
 barry.fraser@sfgov.org

✉ "Kimo Crossman" <kimo@webnetic.net>

"Kimo Crossman"
 <kimo@webnetic.net>

10/17/2008 10:21 AM

To "Barry Fraser"
 <Barry.Fraser@SFGOV.ORG>,
 <home@prosf.org>
 cc "Jack Chin"
 <Jack.Chin@sfgov.org>, "SFGTV"
 <sfgtv@sfgov.org>, "Thomas Long"
 <Thomas.Long@sfgov.org>, "Ron
 Vinson" <Ron.Vinson@sfgov.org>;
 <dtis@sfgov.org>
 Subject RE: OVERDUE: Immediate Disclosure
 Request - SFGTV programming

From: Kimo Crossman [mailto:kimo@webnetic.net]
Sent: Thursday, October 16, 2008 7:03 PM
To: 'Barry Fraser'; 'home@prosf.org'
Cc: 'Jack Chin'; 'SFGTV'; 'Thomas Long'; 'Ron Vinson'; 'dtis@sfgov.org'
Subject: RE: OVERDUE: Immediate Disclosure Request - SFGTV programming

???

From: Kimo Crossman [mailto:kimo@webnetic.net]
Sent: Wednesday, October 15, 2008 10:43 PM
To: 'Barry Fraser'; 'home@prosf.org'
Cc: 'Jack Chin'; 'SFGTV'; 'Thomas Long'; 'Ron Vinson'; 'dtis@sfgov.org'
Subject: RE: OVERDUE: Immediate Disclosure Request - SFGTV programming
Importance: High

Thank you for that link and I hope you had a nice day off

I need more information this is only a very partial response - for example it does not describe the legislation, motions enacting SFGTV actions it also does not describe the actual budget for the requested period and lastly it does not describe why the Taxi Commission for example would have coverage but not Ethics Commission or SOTF.

I request a complete response to my original question with daily incremental updates.

From: Barry Fraser [mailto:Barry.Fraser@SFGOV.ORG]
Sent: Wednesday, October 15, 2008 4:33 PM
To: Kimo Crossman
Cc: 'Jack Chin'; 'SFGTV'; 'Thomas Long'; Ron Vinson
Subject: Re: OVERDUE: Immediate Disclosure Request - SFGTV programming

Mr. Crossman,

The Department of Technology has conducted a thorough search and found no records which meet your request. SFGTV has posted programming policies on its web site at: http://www.sfgov.org/site/sfgtv_index.asp?id=11468#programming_policies

Please note that Monday October 13, 2008 was a City holiday, so this response falls within the IDR time frame.

Barry Fraser
 Telecommunications Policy Analyst
 City and County of San Francisco
 Department of Technology
 One South Van Ness, 2nd Floor
 San Francisco, CA 94103

Phone: 415-581-3976
 Fax: 415-581-3970
 barry.fraser@sfgov.org

"Kimo Crossman"
 <kimo@webnetic.net>

To "SFGTV" <sfgtv@sfgov.org>, "Barry Fraser" <Barry.Fraser@SFGOV.ORG>, "Jack Chin" <Jack.Chin@sfgov.org>
 CC <home@prosf.org>, "Thomas Long" <Thomas.Long@sfgov.org>, <dtis@sfgov.org>
 Subject: OVERDUE: Immediate Disclosure Request - SFGTV programming

10/15/2008 08:39 AM

From: Kimo Crossman [<mailto:kimo@webnetic.net>]
Sent: Sunday, October 12, 2008 2:51 PM
To: 'SFGTV'; 'Barry Fraser'; 'Jack Chin'
Cc: 'home@prosf.org'; 'Allen Grossman'; 'Thomas Long'; 'rak0408@earthlink.net'; 'dougcoms@aol.com'; 'Joe Lynn'; 'oliverlear@yahoo.com'; 'James Chaffee'; 'Libraryusers2004@yahoo.com'
Subject: Immediate Disclosure Request - SFGTV programming
Importance: High

Immediate Disclosure Request

Please email to me all active: legislation, ordinances, procedures and motions which pertain to programming coverage by SFGTV including any goals, charters or objectives for 2008 to present. For example, this should include information about why the BOS receives SFGTV coverage but Ethics Commission does not but the Taxi Commission does. You may exclude the amendment to the Sunshine Ordinance pertaining to digital recordings in City Hall. Also please include any budget information used to support these initiatives – for example Staff, bandwidth and equipment..

Please provide information on a daily incremental basis, in native electronic format or scanned PDF if only exists in paper format.

Please contact me if this request needs need clarification – This request should be read broadly and exemptions narrowly.

Attachments:
2009sfgtv.pdf

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z	AA
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
REP/PROJECT CODE	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL PRICE	PERCENTAGE	PERCENTAGE	PERCENTAGE	PERCENTAGE	PERCENTAGE	PERCENTAGE	PERCENTAGE	PERCENTAGE	PERCENTAGE	PERCENTAGE	PERCENTAGE	PERCENTAGE	PERCENTAGE	PERCENTAGE	PERCENTAGE	PERCENTAGE	PERCENTAGE	PERCENTAGE	PERCENTAGE	PERCENTAGE	
42424	Professional Services - Project Management	Hour	1000	100.00	100,000.00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
42424	Professional Services - Equipment Maintenance	Hour	1000	100.00	100,000.00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
42424	Professional Services - Field Support	Hour	1000	100.00	100,000.00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
42424	Professional Services - Training	Hour	1000	100.00	100,000.00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
42424	Professional Services - Quality Assurance	Hour	1000	100.00	100,000.00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
42424	Professional Services - Safety	Hour	1000	100.00	100,000.00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
42424	Professional Services - Environmental	Hour	1000	100.00	100,000.00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
42424	Professional Services - Health	Hour	1000	100.00	100,000.00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
42424	Professional Services - Security	Hour	1000	100.00	100,000.00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
42424	Professional Services - Communications	Hour	1000	100.00	100,000.00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
42424	Professional Services - Transportation	Hour	1000	100.00	100,000.00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
42424	Professional Services - Accommodation	Hour	1000	100.00	100,000.00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
42424	Professional Services - Food	Hour	1000	100.00	100,000.00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
42424	Professional Services - Entertainment	Hour	1000	100.00	100,000.00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
42424	Professional Services - Other	Hour	1000	100.00	100,000.00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	

From: Barry Fraser/DTIS/SFGOV
To: kimo@webnetic.net
cc: "Jack Chin" <Jack.Chin@sfgov.org>, kimocrossman@gmail.com, "Paula Jesson" <Paula.Jesson@sfgov.org>, "Ron Vinson" <Ron.Vinson@sfgov.org>, SOTF <sotf@sfgov.org>, Thomas Long/CTYATT@CTYATT
bcc: Olga Ryerson/ADMSVC/SFGOV@SFGOV

Date: Wednesday, December 03, 2008 04:51PM
Subject: Re: Petition to Supervisor of Records - Spreadsheet in Excel Format

Mr. Crossman,

Attached is the tab-delimited spreadsheet you requested.

The formulas used in the spreadsheet in Columns A, C and E on lines 23, 36, 37, 40, 46, 51, 54, 60, 83, 86, 93, 98, 103, 120, 125, 126, 131,132 are all simple roll up sums of the lines above. There are no additional formulas used in any of the calculation.

Barry Fraser
 Telecommunications Policy Analyst
 City and County of San Francisco
 Department of Technology
 One South Van Ness, 2nd Floor
 San Francisco, CA 94103

Phone: 415-581-3976
 Fax: 415-581-3970
 barry.fraser@sfgov.org

kimo <kimo@webnetic.net>

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

12/03/2008 12:46 PM

Please respond to kimo@webnetic.net

To "Paula Jesson"
 <Paula.Jesson@sfgov.org>
 cc "Ron Vinson"
 <Ron.Vinson@sfgov.org>, "Barry
 Fraser"
 <Barry.Fraser@sfgov.org>, "Jack
 Chin" <Jack.Chin@sfgov.org>, SOTF
 <sotf@sfgov.org>

Subject: Re: Petition to Supervisor of Records - Spreadsheet in Excel Format

Ms. Jesson

I request the detailed formulas (not brief description) from SFGTV/DTIS of the spreadsheet

I also request the tab delimited version of the spreadsheet

Production of this information is significantly overdue - that means the petition is

upheld not denied.

Additionally I request the original copy of the spreadsheet.

6253 (b) provides for an exact copy of the original
6453.9 is applicable
67.21 (L) provides for format requested
67.21-1 is applicable

The Sunshine taskforce has issued numbers rulings on this matter and even referred departments to Ethics for Official Misconduct for refusal to provide this information.

Please explain why these provisions are not applicable, what is the public interest in withholding this particular spreadsheet?

67.20 (b) "Public Information" shall mean the content of "public records" as defined in the California Public Records Act (Government Code Section 6252), whether provided in documentary form or in an oral communication. "Public Information" shall not include "computer software" developed by the City and County of San Francisco as defined in the California Public Records Act (Government Code Section 6254.9).

6252 (g) "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

And according to the legislative history of CPRA:

This definition is intended to cover **every conceivable kind of record that is involved in the government process...** Only purely personal information unrelated to "the conduct of the public's business" could be considered exempt from this definition, i.e., the shopping list phoned from home, the letter to a public officer from a friend which is totally void of reference to governmental activities (*Assembly Comm. on Statewide Information Policy, Appendix I to Journal of Assembly (1970 Reg. Sess.) Final Report p. 9*)

Besides the broad application towards disclosure under Prop 59, the Public's Business is broadly construed and rarely contested (*California State University v. Superior Court, 90 Cal.App. 4th 810, 824-25 (2001)*; *San Gabriel Tribune v. Superior Court 143 Cal. App. 3d 762, 774 (1983)*).

6253

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

67.21

(l) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

6253.9. (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the

direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

(c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

(e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

SEC. 67.21-1. POLICY REGARDING USE AND PURCHASE OF COMPUTER SYSTEMS.

(a) It is the policy of the City and County of San Francisco to utilize computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this section. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall program and design these systems to ensure convenient, efficient, and economical public access to records and shall make public records easily accessible over public networks such as the Internet.

(b) Departments purchasing new computer systems shall attempt to reach the following goals as a means to achieve lower costs to the public in connection with the public disclosure of records:

(1) Implementing a computer system in which exempt information is segregated or filed separately from otherwise disclosable information.

(2) Implementing a system that permits reproduction of electronic copies of records in a format that is generally recognized as an industry standard format.

(3) Implementing a system that permits making records available through the largest non-profit, non-proprietary public computer network, consistent with the requirement for security of information.

On Wed, Dec 3, 2008 at 12:23 PM, Paula Jesson <Paula.Jesson@sfgov.org>

wrote:

Dear Mr. Crossman,

On October 22, 2008, you submitted a petition to the Supervisor of Records regarding your request to the Department of Technology for records "which pertain to programming coverage by SFGTV including any goals, charters or objectives for 2008 to present . . . Please provide information . . . in native electronic format or scanned PDF if only [sic] exists in paper format."

In response to your request, the Department of Technology provided you with a spreadsheet in PDF. Your petition to the Supervisor of Records states:

"SFGTV has unlawfully refused to provide the excel format version of the spreadsheet attached. Would you please work to obtain its release? There is no authority provided by the CA to redact formulas in spreadsheets what [sic] happens when conversion to PDF occurs - the CA PDF memo only relates to Word documents."

Your statement that "the CA PDF memo only relates to Word documents" is presumably a reference to an opinion by the City Attorney's Office of September 19, 2006 and a follow-up letter of August 11, 2008 advising that a City department has discretion under the California Public Records Act and the Sunshine Ordinance to provide an electronic record in response to a public records request in PDF rather than Word format. The reasoning of that opinion applies to a spreadsheet in Excel format. An Excel spreadsheet, like a Word document, may have "metadata" that a department is either permitted or legally required to withhold from public disclosure. In addition, like a Word document, the text of an Excel spreadsheet may be subject to alteration. Therefore, the basis for concluding that a department may decline to produce a Word document applies as well to an Excel spreadsheet

It is my understanding based on information provided by the Department of Technology that a requester may want an Excel spreadsheet other than in PDF in order to understand the formulas that the department uses in the spreadsheet. Formulas in spreadsheets can range from simple addition to complex calculations. As the author inserts numbers (for example, to

calculate interest payments due), the Excel program calculates the conclusion based on the formula. The author can insert revised numbers (for the interest rate or number of months paid) and obtain a revised calculation, based on the same formula.

Again, based on information provided by the Department of Technology, I understand that another reason that a requester may want an Excel spreadsheet is to import and place data from the spreadsheet, which is arranged in rows and columns, into another program. A method of allowing text from an Excel spreadsheet to be imported into another program, so that the grid-like layout is retained, is to convert the Excel spreadsheet to "tab delimited format."

I am informed that the Department of Technology has no objection to providing you with a brief written description of the formula used in the spreadsheet or transmitting the spreadsheet to you in tab delimited format.

Please let Barry Fraser of the Department of Technology know if you want either a brief written description of the formula used in the spreadsheet or to obtain the spreadsheet in tab delimited format.

In light of the reasoning of the prior opinion of the City Attorney's Office, and in light of the Department of Technology's having provided you with the spreadsheet that you requested in PDF, and its willingness to provide the additional information described above, the Supervisor of Records denies your petition.

Paula Jesson
Deputy City Attorney
City and County of San Francisco
Room 325 City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Telephone: (415) 554-6762
Fax: (415) 554-4699
email: paula.jesson@sfgov.org

Attachments:

SFGTV 750053.txt

Attachment 4 -SFGTV 750053.txt
 DEPARTMENT OF TELECOMMUNICATIONS & INFORMATION SERVICES

DIVISION: SFGTV

FISCAL YR: 2008 - 2009

Index Code: 750053

PROGRAM BK4

FUND AAA

FAMIS PROJECT CODE None

DTIS PROJECT CODE "953CTW, 953REP, Various PT"

MANAGER JACK CHIN

Closed Captioning Services

Labor				A	B	C
D	E					
Object Code	Subobject	Object Code/Subobject	Code Title	FY09 Phase D		
Description	Vendor	Project Code	Reference	FY09		
Budget Modification	FY09	Revised Budget	"Actual			
Expenses"	Budget	Variance	Notes	Budget Mod #	JUL	AUG
OCT	NOV	DEC	JAN	MAR	MAY	JUN
FTE		Perm	FEB	APR		SEP
						MTH 13
FTE		Temp				
FTE		Perm		9.7		9.7
	#REF!					
FTE		Temp		1.08		1.08
	#REF!					
001	00100	Permanent salaries				
"682,738 "	"	"682,738 "	0	"682,738 "		
005	00500	Temp salaries				"82,821 "
"82,821 "	"	0	"82,821 "			
009	00900	Premium Pay				"1,507 "
"1,507 "	"	0	"1,507 "			

Attachment 4 -SFGTV 750053.txt									
011	01100	Overtime							"6,000 "
	"6,000 "		0	"6,000 "					
Total Salary									"773,066 "
0	"773,066 "		0	"773,066 "				0	0
0	0	0	0	0	0	0	0	0	0
0									
013	01301	RETIRE CITY MISC							
"34,069 "	"	"34,069 "	0	"34,069 "					
013	01379	RETIREMENT PICKUP (PREM/OTHER ADJUSTMENT)							
		(57)	(57)	0	(57)				
014	01401	SOCIAL SECURITY (OASDI)							
"45,451 "	"	"45,451 "	0	"45,451 "					
014	01402	SOCIAL SECURITY - MEDICARE (HI ONLY)							
"11,212 "	"	"11,212 "	0	"11,212 "				"11,212 "	
015	01501	HEALTH SERVICE-CITY MATCH							
"50,452 "	"	"50,452 "	0	"50,452 "					
015	01561	HEALTH SERVICE-SUBSIDY							0
	0	0	0						
015	01571	DEPENDENT COVERAGE-MISCELLANEOUS							
"45,996 "	"	"45,996 "	0	"45,996 "				"45,996 "	
016	01601	DENTAL COVERAGE							
"12,452 "	"	0	"12,452 "					"12,452 "	
017	01701	UNEMPLOYMENT INSURANCE							774
	774	0	774						
019	01901	FRINGE ADJUSTMENTS-BUDGET							
0	0	0	0						
019	01911	FLEXIBLE BENEFIT PACKAGE							
"2,907 "	"	"2,907 "	0	"2,907 "				"2,907 "	
019	01912	LONG TERM DISABILITY INSURANCE							
"3,389 "	"	"3,389 "	0	"3,389 "				"3,389 "	
Total Fringe									"206,645 "
0	"206,645 "		0	"206,645 "				0	0
0	0	0	0	0	0	0	0	0	0
0									
Total Salaries & Fringe									
"979,711 "	0	"979,711 "	0	"979,711 "				0	0
0	0	0	0	0	0	0	0	0	0
0	0	0							
020	02001	Indirect Cost Reimbursement							953CTW
"125,675 "	"	"125,675 "	0	"125,675 "				"125,675 "	
								0	0

Attachment 4 -SFGTV 750053.txt

0	0								
020	020XX	COWCAP					"125,675 "		0
"125,675 "		0	"125,675 "				0	0	0
0	0	0	0	0	0	0	0	0	0
021	02102	Travel Cost Paid to Vendors					Natoa Conference (2)		
953CTW		"4,000 "		"4,000 "			0	"4,000 "	
021	02102	Travel Cost Paid to Vendors					Scan-Natoa Conference (2)		
953CTW		600		600			0	600	
021	02102	Travel Cost Paid to Vendors					Streaming Media Conference		
953CTW		200		200			0	200	
							(960)		(960)
0	(960)								
0	0						0		0
021	021XX	Travel					"3,840 "		0
"3,840 "		0	"3,840 "				0	0	0
0	0	0	0	0	0	0	0	0	0
022	02200	Training					BAVC (Bay Area Video Coalition)		953CTW
		"5,000 "		"5,000 "			0	"5,000 "	
022	02200	Training					Natoa registration		953CTW
"2,000 "		"2,000 "		0	"2,000 "				
"(1,050)"	0	"(1,050)"					"(1,050)"		
							0		0
0	0								
022	022XX	Training					"5,950 "		
0	"5,950 "	0	0	"5,950 "			0	0	0
0	0	0	0	0	0	0	0	0	0
0	0								
023	02300	Employee Field Expenses Budget					953CTW		25
	25	0	25						
							0		0
0	0								
023	023XX	Employee Expenses							25
0	25	0	25			0	0	0	0
0	0	0	0	0	0	0	0	0	
024	02400	Membership Fees Conference					Media Alliance (conference)		
953CTW		125	125	0			125		
024	02400	Membership Fees					Scan Natoa		953CTW
	200	0	200						200
024	02400	Membership Fees					Group membership		953CTW
500		500	0	500			Natoa		
024	02400	Membership Fees					Miscellaneous		953CTW
175		0	175						175

0	0					0		0
024	024XX	Membership Fees					"1,000 "	
0	"1,000 "	0	0	"1,000 "		0	0	0
0	0	0	0	0	0	0	0	0
0								
027	02761	Systems Consulting Services				Video Streaming	Granicus	
953CTW	"32,000 "	"32,000 "		"32,000 "	0	0	"32,000 "	
027	02761	Other Professional Services				Captioning Services - City		
Attorney	TBD	117CTW		"1,100 "			"1,100 "	
0	"1,100 "							
027	02761	Other Professional Services				Captioning Services - Planning		
Commission	TBD	119CTW		"34,320 "			"34,320 "	
0	"34,320 "							
Office	TBD	Other Professional Services				Captioning Services - Mayor's		
"10,000 "	953CTW	"10,000 "				"10,000 "	0	
027	02761	Other Professional Services				Captioning Services - Police		
Commission	TBD	161CTW		"16,632 "			"16,632 "	
0	"16,632 "							
027	02761	Other Professional Services				Captioning Services - Police		
Commission Remote	TBD	161CTW				"5,676 "	"5,676 "	
"	0	"5,676 "						
027	02761	Other Professional Services				Captioning Services - Mayor's		
Disaster Council	TBD	162CTW				"1,320 "	"1,320 "	
"	0	"1,320 "						
027	02761	Other Professional Services				Captioning Services - Taxi Cab		
Commission	TBD	163CTW		"10,560 "			"10,560 "	
0	"10,560 "							
027	02761	Other Professional Services				Captioning Services - Public		
Defender	TBD	165CTW	770			770	0	770
027	02761	Other Professional Services				Captioning Services - Local		
Agency Formation	Commission	TBD	181CTW			"1,980 "		
"1,980 "	0	"1,980 "						
027	02761	Other Professional Services				Captioning Services - BOS		
Meetings	TBD	953CTW		"72,000 "			"72,000 "	
0	"72,000 "							
027	02761	Other Professional Services				Captioning Services - Mayor's		
Disability Council	TBD	221CTW				"4,620 "	"4,620 "	
"	0	"4,620 "						
027	02761	Other Professional Services				Captioning Services - Small		
Business Commission	TBD	229CTW				"3,960 "	"3,960 "	
"	0	"3,960 "						
027	02761	Other Professional Services				Captioning Services - Board of		
Appeals	TBD	370CTW		"14,256 "		"14,256 "	0	
"14,256 "								
027	02761	Other Professional Services				Captioning Services - Building		
Inspection Commission	TBD	415CTW				"5,280 "	"5,280 "	
"	0	"5,280 "						

Attachment 4 -SFGTV 750053.txt

027	02761	Other Professional Services	Captioning Services - DBI						
video production programs	TBD	415CTW	"3,300 "						
"3,300 "	0	"3,300 "							
027	02761	Other Professional Services	Captioning Services - Board of Education						
TBD	611CTW	"13,200 "	"13,200 "						
0	"13,200 "								
027	02761	Other Professional Services	Captioning Services - Transportation Authority						
TBD	622CTW	"7,920 "	"7,920 "						
"7,920 "	0	"7,920 "							
027	02761	Other Professional Services	Captioning Services - Transbay Joint Powers Authority						
TBD	623CTW	"3,960 "	"3,960 "						
"	0	"3,960 "							
027	02761	Other Professional Services	Captioning Services - Public Utilities Commission						
TBD	726CTW	"11,880 "	"11,880 "						
"11,880 "	0	"11,880 "							
027	02761	Other Professional Services	Captioning Services - Municipal Transportation Agency						
TBD	735CTW	"10,560 "	"10,560 "						
"10,560 "	0	"10,560 "							
							0		0
0	0								
027	027XX	Professional & Specialized Services							
"265,294 "	0	"265,294 "	0	"265,294 "	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0
029	02900	Budget Equipment Maintenance	953CTW						"3,000
"	"3,000 "	0	"3,000 "						
							0		0
0	0								
029	029XX	Maintenance Svcs-Equipment							
"3,000 "	0	"3,000 "	0	"3,000 "	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0
035	03521	Freight/Delivery	Freight/Delivery						953CTW
150	150	0	150						
035	03551	Copy Machine	Danka	953CTW					"2,520 "
"2,520 "	0	"2,520 "							
035	03596	Software License Fees	Adobe Photo Shop						953CTW
"1,000 "	"1,000 "	"1,000 "	0	"1,000 "					
035	03596	Software License Fees	Avid Express Pro						953CTW
"1,538 "	"1,538 "	"1,538 "	0	"1,538 "					
035	03599	Other Current Expenses	Alhambra						953CTW
0	0	0	0						
							0		0
0	0								
035	035XX	Other Current Expenses							"5,208

Attachment 4 -SFGTV 750053.txt

"	0	"5,208 "	0	"5,208 "	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0
0	0								
040	04000	Materials/Supplies	Budget - Contingency						953CTW
	"2,000 "	"2,000 "	0	"2,000 "					
040	04950	Office Supplies - Citywide Contract	Office Depot						
953CTW	"1,051 "	"1,051 "	0	"1,051 "					
040	04951	Other Office Supplies	"Audio & Video Tapes, Sleeves"						
CALIFORNIA MEDIA SOLUTION	953CTW	"10,000 "	"10,000 "						
"10,000 "	0	"10,000 "							
0	0								
040	040XX	Materials & Supplies							
"13,051 "	0	"13,051 "	0	"13,051 "					
0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0
081	081CB	Insurance & Risk Reductions							953CTW
"5,150 "		"5,150 "	0	"5,150 "					
081	081CI	IS - CITY WIDE INFRASTRUCTURE (AAO)							953CTW
"615,246 "		"615,246 "	0	"615,246 "					
081	081PR	Reproduction	953REP						"1,839 "
"1,839 "	0	"1,839 "							
0	0								
081	081XX	Services of Other Departments							
"622,235 "	0	"622,235 "	0	"622,235 "					
0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0
086	086AD	Admin Svcs budget	Disability Counsel office						"(14,089) "
221CTW	"(14,089) "	"(14,089) "	0	"(14,089) "					
086	086BD	Board of Supv To cover meetings and for Local Agency	Formation Comm	181CTW	"(9,795) "				"(9,795) "
0	"(9,795) "	"(9,795) "							
086	086BE	Economic & Workforce Development	Office of Small						
Business Affairs	229CTW	"(14,901) "	"(14,901) "						
"(14,901) "	0	"(14,901) "							
086	086BI	Building Inspection							415CTW
"(60,604) "		"(60,604) "	0	"(60,604) "					
086	086CP	City Planning	City Planning Commission						119CTW
"(107,262) "		"(107,262) "	0	"(107,262) "					
086	081CT	City Attorney							117CTW
"(4,025) "	0	"(4,025) "							"(4,025) "
086	086EV	Environment							227CTW
									"(19,955) "

086	086MT	MTA - Municipal Railway		0					
"(36,611)"		"(36,611)"						"(36,611)"	
086	086MY	Mayor's Office	Mayor's TownHall Meeting	0				"(12,500)"	151CTW
"(12,500)"		"(12,500)"							
086	086PA	Board of Appeals		0				"(50,814)"	370CTW
"(50,814)"		"(50,814)"							
086	086PC	Police		0	161CTW			"(90,657)"	
"(90,657)"		"(90,657)"							
086	086PD	Public Defender		0	165CTW			"(10,000)"	
"(10,000)"		"(10,000)"							
086	086RP	Rec & Park		0				"(37,359)"	
"(37,359)"		"(37,359)"							
086	086TY	Taxi Commission		0	163CTW			"(23,938)"	
"(23,938)"		"(23,938)"							
086	086UC	Public Utilities		0				"(40,015)"	726CTW
"(40,015)"		"(40,015)"							
0	0							0	0
086	086XX	Expenditure Recovery - AAO (Interdept)						"(532,525)"	
"(532,525)"		0	"(532,525)"	0				"(532,525)"	
0	0	0	0	0	0	0	0	0	0
0	0	0	0						
087	08799	Unallocated Recvry	Transportation Authority meetings					"(37,292)"	0
"(37,292)"	622CTW	"(37,292)"	"(37,292)"						
087	08799	Unallocated Recvry	Transbay Joint Power Authority					"(17,701)"	0
"(17,701)"	623CTW	"(17,701)"	"(17,701)"						
087	08799	Unallocated Recvry	Board of Education	0				"(41,856)"	611CTW
"(41,856)"		"(41,856)"	"(41,856)"						
0	0								0
087	087XX	Expenditure Recovery - Non AAO (Outside Agencies)						"(96,849)"	
"(96,849)"		"(96,849)"	0	"(96,849)"	0				
0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0
Total Non-Labor								"415,904 "	
0	"415,904 "	0	"415,904 "	0				0	0
0	0	0	0	0	0	0	0	0	0
0									
Grand Total								"1,395,615 "	

non-labor expenses without recovery	"1,045,278 "
Total expenses without recovery	"2,024,989 "
Total non-labor without recovery	"1,045,278 "
953CTW	"892,145 "
953REP	"1,839 "
117CTW	"1,100 "
119CTW	"34,320 "
161CTW	"22,308 "
162CTW	"1,320 "
163CTW	"10,560 "
165CTW	770
181CTW	"1,980 "
221CTW	"4,620 "
229CTW	"3,960 "
370CTW	"14,256 "
415CTW	"8,580 "
611CTW	"13,200 "
622CTW	"7,920 "
623CTW	"3,960 "
728CTW	"11,880 "
735CTW	"10,560 "
	"1,045,278 "



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MEMORANDUM

TO: Honorable Members
Sunshine Ordinance Task Force

FROM: Paul Zarefsky
Deputy City Attorney

DATE: September 19, 2006

RE: Providing Electronic Records In PDF Rather Than Word Format When Responding
To A Public Records Request

This Office has orally advised City departments that, in response to a public records request for an electronic copy of a record, a City department may provide the record to the requester in PDF¹ rather than Word format. In this memorandum, we address the legal principles supporting this conclusion. The issue potentially affects all City departments, because all departments maintain electronic records. The volume of such records is huge, and we expect that the issue will arise in future public records requests for electronic records.

We address this issue from two perspectives – (1) protecting "metadata" hidden in the electronic record and (2) protecting the text of the electronic record. This memorandum does not address any complaint before the Task Force. Rather, we intend to provide general advice on this issue.

Protecting Metadata Hidden In The Electronic Record

A Word document – unlike an electronic record in PDF format – contains "metadata." This term generally refers to information about an electronic record that does not appear in the text but is automatically generated by the program when a text is created, viewed, copied, edited, printed, stored, or transmitted using a computer. The metadata are typically embedded in the record in a manner not readily viewed or understood by persons without specialized computer training, that enables one to locate information that is not shown in the text. We use the term "metadata" broadly to include any information embedded in the record that is not visible in the text.

The metadata may include a wide variety of information that the City has a right – and, in some cases, a legal duty – to withhold from public view. For example, earlier versions of an electronic record are present in metadata and often will include recommendations of the author of a draft, which the Sunshine Ordinance allows the City to withhold from disclosure. (S.F.

¹ The term "PDF" is an abbreviation for Portable Document Format. As the term suggests, a PDF record functions as a "portable" document in that it may be transmitted electronically as a whole document and viewed and read on a computer screen. A scanned PDF record essentially is a picture of a document that may be viewed and read on a computer screen. A searchable PDF record permits the viewer/reader to search the document for specific words or phrases and to cut and paste from the document. Neither type of PDF record contains metadata embedded in the record.

Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force

DATE: November 2, 2006

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Admin. Code §67.24(a)(1).) Such passages could include edits that are part of the author's thought process and were never intended to be communicated to another person. As a second example, earlier versions of an electronic record that are present in metadata may include information the disclosure of which would violate a third party's privacy – a right the law zealously safeguards. (Cal. Gov. Code §§ 6250, 6254(c); S.F. Admin. Code §67.1(g); Cal. Const., Art. I, sec. 1.) A wide range of types of information may be encompassed within the right of privacy; everything from residential phone numbers and Social Security numbers to sensitive medical, financial, and sexual data to information provided by, and the identity of, whistleblowers. As a third example, metadata may include communications between attorney and client that do not appear in the text of the record. The law protects confidential attorney-client communications from disclosure. (Cal. Evid. Code §954.) These examples are merely illustrative of the broader point that metadata may contain information specifically subject to redaction under the Public Records Act and the Sunshine Ordinance.

If a department were to give a requester a document in Word format, the department would be required to review the metadata embedded in the document. Failure to conduct this review would risk disclosure of privileged material. Yet reviewing the metadata would be a laborious, burdensome, and problematic task – different in nature and magnitude from the process of reviewing the text to determine information that should be redacted and information that is reasonably segregable from that which should be redacted. Electronic records may be adapted from any number of earlier texts – which would themselves contain metadata – and may have been subject to numerous edits. Information recorded in the process of creating and editing the text of such a document may be unknown to the author, the sender, and/or the recipient. The investigation necessary to determine whether redactions in metadata are legally warranted would in many cases be daunting. Merely identifying and interpreting certain of the metadata would require considerable expertise beyond the skill and capacity of all but a small number of City employees. And there is considerable risk that even those with the expertise would not locate all the metadata.

In addition, the metadata embedded in a Word document could reveal sensitive information about the operation of the City's computer and communications system that could be used by a third party to undermine the integrity and security of that system. For example, the disclosure of such information as unique identifiers for individual computer terminals and computer servers, and the location of information in a department's computer system, could compromise the integrity and security of the system. We do not understand that disclosure of metadata alone would in itself permit an unscrupulous individual to "hack" into the City's computer system. But should such an individual find his or her way into the City's system, knowledge about metadata gleaned from a Word document made available to the public could make it easier for that person to navigate his or her way through the system, locate sensitive files, alter or delete documents, and generally undermine the security of records within the system.

In making decisions about disclosure of public records, the City may not inquire as to a requester's purpose, or the use the requester may make of the information obtained. (Cal Gov. Code §6257.5; S.F. Admin. Code §67.25(c).) Requests from prudent, civic-minded persons must be treated the same as requests from reckless or ill-motivated persons. Further, disclosure of a record to one member of the public generally precludes the City from withholding that record from another member of the public. (Cal. Gov. Code §6254.5.) Thus, even if the City is certain that a particular requester has a legitimate purpose and would not misuse – or even review –

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TO: Honorable Members
Sunshine Ordinance Task Force

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information contained in the metadata of a requested record, the City does not have the luxury of indulging benign assumptions about requesters when determining its response to a public records request for an electronic record in Word format.

These problems must be understood not from the vantage point of one isolated electronic record that may be the subject of a Task Force hearing. City government is comprised of scores of departments and even more boards, commissions, and advisory bodies, and there are literally millions of electronic records within the City's files, that have been created, edited, transmitted, or received by a workforce of approximately 25,000 to 30,000 employees. The staff resources of the City – technical, professional, and clerical – that may be devoted to responding to public records requests are limited.

If the City is required to disclose documents in Word format in response to a public records request, there could be a significant adverse impact on the conduct of City business – both everyday public business, and the business of responding to public records requests. The City has no control over the number and scope of public records requests it receives, or the number and scope of requests filed by a single person or small group of persons. The added burden of having to review metadata in electronic records could be crippling if the City is required to provide electronic records to requesters in Word rather than PDF format.

The City's duty to respond to a public records request is limited by a rule of reason. It has long been understood that public records laws do not impose absolute requirements on public entities. Rather, the efforts required to respond to a public records request are inherently bounded by a standard of reasonableness. In *Bruce v. Gregory* (1967) 65 Cal.2d 666, the California Supreme Court articulated this elementary principle of public records law:

We ... hold that the rights created by [predecessor statutes to the Public Records Act] are, by their very nature, not absolute, but are subject to an implied rule of reason. Furthermore, this inherent reasonableness limitation should enable the custodian of public records to formulate regulations necessary to protect the safety of the records against theft, mutilation or accidental damage, to prevent inspection from interfering with the orderly function of his office and its employees, and generally to avoid chaos in the record archives.

Id. at 676. Both the California courts and the California Attorney General have extended *Bruce's* implied rule of reason to public records requests under the Public Records Act. (*Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754, 761; 64 Ops.Cal.Atty.Gen. 186, 189-91 (1981) [Op. No. 80-1106]; 64 Ops.Cal.Atty.Gen. 317, 321 (1981) [Op. No. 80-1006]; 76 Ops.Cal.Atty. Gen. 235, 241 (1993) [Op. No. 93-702].)

There is no indication that the Board of Supervisors, in adopting the Sunshine Ordinance in 1993, or the voters, in amending the Ordinance in 1999, intended to jettison this longstanding principle of public records law. Indeed, in the context of assessing under both the Public Records Act and the Sunshine Ordinance the reasonableness of a search for records, the San Francisco Superior Court has ruled that the same reasonableness limitations applicable to the Act apply as well to the Ordinance.²

² *Western Select Securities, Inc. v. Murphy, et al.*, S.F. Superior Court No. 312310, Slip Op. at 5-6 (copy attached; stamped August 24, 2000, issued December 1, 2000). This ruling was

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In addition, Section 67.21-1(a) of the Sunshine Ordinance states that "[I]t is the policy of the City and County of San Francisco to utilize computer technology *in order to reduce the costs of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this section.*" (S.F. Admin. Code §67.21-1(a) [emphasis added].)³

A court would likely conclude that these principles of reasonableness and cost containment that govern disclosure of public records under the Public Records Act and the Sunshine Ordinance permit the City to decline to provide to a requester metadata that is embedded in an electronic record such as a Word document. To require departments to disclose electronic records in Word format would necessitate their exhaustively searching and reviewing metadata in those records before finalizing a response to the requester. This process would entail considerable cost to the City, given the technical expertise and staff resources that would have to be devoted to it. Imposing this process on the City would contradict the City's own policy of using computer technology to reduce the costs incurred in disclosing public records.

Protecting The Text Of The Electronic Record

The text of a Word document may be easily edited or otherwise altered by the requester or by persons to whom the requester makes the document available. The alteration would not be obvious or readily discernible to the average person or even in many cases to someone generally familiar with the document. As a result, providing a record in Word format to a requester jeopardizes the integrity of the record. That format makes it easy for the requester or others to change the record and then present the altered record as the original. Apart from any such questionable purpose, if the City provides a record in Word format and the requester or others edit or otherwise alter the record, there is the potential for creating confusion, even inadvertently, as to whether the original record or the altered version is the true public record.

The Public Records Act allows public entities to address these concerns in making records available to the public. Section 6253.9 of the Act addresses information in an electronic format. (Cal. Gov. Code §6253.9.) Subsection (f) states: "Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained." (Cal. Gov. Code §6253.9(f).) Disclosure of a record in Word format could jeopardize the integrity of

not disturbed on appeal. *See Western Select Securities, Inc. v. Superior Court*, Court of Appeal, First District, Case No. A093500, May 3, 2001 (order denying petition for writ of mandate). While a trial court opinion generally may not be cited as precedent in a judicial proceeding (*see* Cal. Rule of Court 977), this trial court opinion nonetheless may shed light on whether a court would be receptive to the point that the Sunshine Ordinance carries forward the principle, recognized both pre- and post-Public Records Act, that public records laws are subject to an implied or inherent rule of reason.

³ In addition, we note that the Sunshine Ordinance endorses "[I]mplementing a system that permits reproduction of electronic copies of records *in a format that is generally recognized as an industry standard format.*" (S.F. Admin. Code §67.21-1(b)(2) [emphasis added].) It is our understanding that PDF versions of electronic records are generally recognized as an "industry standard format" for providing copies of electronic records.

Memorandum

TO: Honorable Members
Sunshine Ordinance Task Force
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the record because the text is so easily manipulated. Subsection (f) thus gives City departments discretion to choose to provide the record to a requester in other more secure formats, and nothing in the Sunshine Ordinance changes this result.

We recognize that computer-savvy experts using sophisticated technological aids are able to tamper with electronic records in some formats other than Word. But this possibility does not change the legal analysis. Subsection (f) permits a department to provide an electronic record to a member of the public in a format less susceptible to textual manipulation than the format requested. A Word document is much more susceptible to textual manipulation, as compared, for example, to a record in scanned PDF format. So long as the integrity of the record is jeopardized by making it available in Word format, Subsection (f) permits the City to provide it in another format.

Conclusion

A court would likely conclude that a City department has discretion under both the Public Records Act and the Sunshine Ordinance to provide an electronic record to a public records requester in PDF rather than Word format.⁴

* * * * *

We hope this memorandum proves useful to the Task Force in its analysis and discussion of an important issue. If there are any questions or concerns on the general issue, divorced from the particulars of any specific case, please feel free to contact this office.

P.Z.

⁴ This memorandum does not address the power of a court in a litigation context to order or limit access of a party to another party's electronic records.

From: Paula Jesson/CTYATT
To: kimo@webnetic.net
cc: Ron Vinson/DTIS/SFGOV@SFGOV, Barry Fraser/DTIS/SFGOV@SFGOV, Jack Chin/DTIS/SFGOV@SFGOV, SOTF/BOS/SFGOV@SFGOV

Date: Wednesday, December 03, 2008 12:20PM
Subject: Petition to Supervisor of Records - Spreadsheet in Excel Format

Dear Mr. Crossman,

On October 22, 2008, you submitted a petition to the Supervisor of Records regarding your request to the Department of Technology for records "which pertain to programming coverage by SFGTV including any goals, charters or objectives for 2008 to present . . . Please provide information . . . in native electronic format or scanned PDF if only [sic] exists in paper format."

In response to your request, the Department of Technology provided you with a spreadsheet in PDF. Your petition to the Supervisor of Records states:

"SFGTV has unlawfully refused to provide the excel format version of the spreadsheet attached. Would you please work to obtain its release? There is no authority provided by the CA to redact formulas in spreadsheets what [sic] happens when conversion to PDF occurs - the CA PDF memo only relates to Word documents."

Your statement that "the CA PDF memo only relates to Word documents" is presumably a reference to an opinion by the City Attorney's Office of September 19, 2006 and a follow-up letter of August 11, 2008 advising that a City department has discretion under the California Public Records Act and the Sunshine Ordinance to provide an electronic record in response to a public records request in PDF rather than Word format. The reasoning of that opinion applies to a spreadsheet in Excel format. An Excel spreadsheet, like a Word document, may have "metadata" that a department is either permitted or legally required to withhold from public disclosure. In addition, like a Word document, the text of an Excel spreadsheet may be subject to alteration. Therefore, the basis for concluding that a department may decline to produce a Word document applies as well to an Excel spreadsheet.

It is my understanding based on information provided by the Department of Technology that a requester may want an Excel spreadsheet other than in PDF in order to understand the formulas that the department uses in the spreadsheet. Formulas in spreadsheets can range from simple addition to complex calculations. As the author inserts numbers (for example, to calculate interest payments due), the Excel program calculates the conclusion based on the formula. The author can insert revised numbers (for the interest rate or number of months paid) and obtain a revised calculation, based on the same formula.

Again, based on information provided by the Department of Technology, I understand that another reason that a requester may want an Excel spreadsheet is to import and place data from the spreadsheet, which is arranged in rows and columns, into another program. A method of allowing text from an Excel spreadsheet to be imported into another program, so that the grid-like layout is retained, is to convert the Excel spreadsheet to "tab delimited format."

I am informed that the Department of Technology has no objection to providing you with a brief written description of the formula used in the spreadsheet or transmitting the spreadsheet to you in tab delimited format.

Please let Barry Fraser of the Department of Technology know if you want either a brief written description of the formula used in the spreadsheet or to obtain the spreadsheet in tab delimited format.

In light of the reasoning of the prior opinion of the City Attorney's Office, and in light of the Department of Technology's having provided you with the spreadsheet that you requested in PDF, and its willingness to provide the additional information described above, the Supervisor of Records denies your petition.

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Deputy City Attorney

2008 DEC 29 11:35:58 DIRECT DIAL: (415) 554-6762
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BY SW December 29, 2008

Honorable Members
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

Re: Complaint #08055 – Kimo Crossman v. CA, DTIS, SFGTV

Dear Members of the Sunshine Ordinance Task Force:

Background

Mr. Crossman filed the complaint at issue here on November 25, 2008. He lodged the complaint against the City Attorney, DTIS, and SFGTV. We submit this letter on behalf of the City Attorney's Office only. The Task Force should dismiss Mr. Crossman's complaint against this office.

Kimo Crossman asked SFGTV, a division of DTIS, for records relating to programming coverage by SFGTV. In responding to the request, SFGTV provided Mr. Crossman with a spreadsheet which it had converted from an Excel to a PDF format. On October 22, 2008, Mr. Crossman filed a petition to the Supervisor of Records regarding this matter, arguing that SFGTV had unlawfully refused to provide the spreadsheet in Excel format.

The Supervisor of Records denied Mr. Crossman's petition on December 3, 2008. A copy of the determination is enclosed.

The Complaint

Of the provisions of the Sunshine Ordinance that Mr. Crossman cites in his complaint, only one -- Section 67.21(d)¹ -- involves the City Attorney's Office. It provides as follows:

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petitioner, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

¹ Unless otherwise noted, all references to code sections in this letter are to the San Francisco Administrative Code.

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Under Section 67.20(c), the City Attorney's Office serves as the Supervisor of Records. In his complaint, Mr. Crossman complains that he "[a]ppealed to Supervisor of records requiring response in 7 days – not provided."

Response to the Complaint

Mr. Crossman complains that the Supervisor of Records did not respond to his petition within the time specified in Section 67.21(d).

Although Mr. Crossman specifies the wrong time period (under Section 67.21(d) the time is ten, not seven, days), he is correct that the Supervisor of Records did not respond to his petition within that time period.²

Because of the frequency and nature of public records requests submitted by Mr. Crossman, the City Attorney's Office informed Mr. Crossman almost three years ago that it would need to limit the time spent in responding to his requests. The reasons are fully set forth in a letter from Public Information Officer Matt Dorsey in January 12, 2006, a copy of which is enclosed. The office more recently reiterated its need to limit the time spent on his requests in a January 17, 2008 letter from Deputy Public Information Officer Alexis Thompson.

Mr. Crossman's extraordinary pattern of requesting records poses a burden on many City departments and the City Attorney's Office is no exception. The City Attorney's Office performs multiple roles with respect to public records requests -- as a responder to requests for its own records, as legal adviser to City officers and employees who receive requests, and as Supervisor of Records through responses to petitions and the annual report to the Task Force.

An example of the burden for this office created by Mr. Crossman's public records requests are his petitions to the Supervisor of Records. The Task Force need only look to the Ninth Annual Supervisor of Records Report to see the number of petitions from Mr. Crossman during the most recent reporting period, as well as the disproportionate amount of time required to address the issues that he raises. By our count, over the last reporting period (October 1, 2007 – September 30, 2008), Mr. Crossman submitted 18 petitions with the Supervisor of Records (including one that he withdrew), many of which evolved into multiple questions and issues, making 18 a conservative number. This is more than all the other petitioners in the reporting period.

Mr. Crossman may of course make as many public records requests as he wishes and submit as many petitions to the Supervisor of Records as he wishes. But the City Attorney's Office would be doing a disservice to City departments, and to the public that they serve, if it did not limit the time spent on his public records requests and his many petitions to the Supervisor of Records so that it could perform its other obligations. Moreover, the rights of the public under public record laws are subject to "an implied rule of reason." *Bruce v. Gregory* (1967) 65 Cal.2d 666, 676 (laws governing public access to records are not absolute, but are subject to an implied rule of reason); *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754,761 (construing the California Public Records Act under the rule of reason set forth in *Bruce v. Gregory*). In creating the Supervisor of Records function, the voters could not have intended the 10-day period for responding to petitions to the Supervisor of Records to be so inflexible as to permit a single individual to monopolize the resources of this office, as Mr. Crossman's numerous requests and petitions could do. Such a construction of the Sunshine Ordinance would violate the "rule of reason" that applies to laws governing the access to public records.

² Although not relevant to the matter before the Task Force, please note that when the 10th day falls on a Saturday, Sunday or holiday, the period of time to respond is extended to the next day that is not a Saturday, Sunday or holiday under the provisions of California Code of Civil Procedure sections 12a and 12b.

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Moreover, the petition to the Supervisor of Records in this case presented an additional issue. As noted in an email that the Supervisor of Records sent Mr. Crossman on November 12, 2008, the department person most familiar with the issues relating to his request was not available. The Supervisor of Records found it appropriate to delay a response in order to fully consider the issues raised in his petition. Again, we seriously doubt that the voters intended the 10-day period for responding to petitions to the Supervisor of Records to hamstring the Supervisor of Records in conducting a sufficiently thorough review of relevant facts and law to make an informed and correct decision, particularly in a matter involving complex issues, as is the case here.

Under the circumstances here, the Supervisor of Records acted reasonably in responding to Mr. Crossman's petition. The Task Force should dismiss his complaint against the Supervisor of Records on the merits.

Jurisdiction of the Task Force to Hear the Complaint

The jurisdiction of the Task Force over the complaint against the City Attorney's Office does not arise under Section 67.21(e), the provision that gives the Task Force jurisdiction over a complaint regarding the withholding of all or a portion of a public record by a City department. Rather, Mr. Crossman's complaint against this office is that the Supervisor of Records has not complied with the time requirement for responding to petitions filed with the Supervisor of Records under Section 67.21(d). The jurisdiction of the Task Force therefore rests on provisions other than its authority under Section 67.21(e), presumably its more general oversight responsibility regarding the operation of the Sunshine Ordinance.

Conclusion

For the reasons stated, the Task Force should dismiss Mr. Crossman's complaint.

Very truly yours,

DENNIS J. HERRERA
City Attorney



Paula Jesson
Deputy City Attorney

Paula Jesson/CTYATT

12/03/2008 12:23 PM

To kimo@webnetic.net

cc Ron Vinson/DTIS/SFGOV@SFGOV, Barry
Fraser/DTIS/SFGOV@SFGOV, Jack
Chin/DTIS/SFGOV@SFGOV, SOTF/BOS/SFGOV@SFGOV

bcc

Subject Petition to Supervisor of Records - Spreadsheet in Excel
Format

Dear Mr. Crossman,

On October 22, 2008, you submitted a petition to the Supervisor of Records regarding your request to the Department of Technology for records "which pertain to programming coverage by SFGTV including any goals, charters or objectives for 2008 to present . . . Please provide information . . . in native electronic format or scanned PDF if only [sic] exists in paper format."

In response to your request, the Department of Technology provided you with a spreadsheet in PDF. Your petition to the Supervisor of Records states:

"SFGTV has unlawfully refused to provide the excel format version of the spreadsheet attached. Would you please work to obtain its release? There is no authority provided by the CA to redact formulas in spreadsheets what [sic] happens when conversion to PDF occurs - the CA PDF memo only relates to Word documents."

Your statement that "the CA PDF memo only relates to Word documents" is presumably a reference to an opinion by the City Attorney's Office of September 19, 2006 and a follow-up letter of August 11, 2008 advising that a City department has discretion under the California Public Records Act and the Sunshine Ordinance to provide an electronic record in response to a public records request in PDF rather than Word format. The reasoning of that opinion applies to a spreadsheet in Excel format. An Excel spreadsheet, like a Word document, may have "metadata" that a department is either permitted or legally required to withhold from public disclosure. In addition, like a Word document, the text of an Excel spreadsheet may be subject to alteration. Therefore, the basis for concluding that a department may decline to produce a Word document applies as well to an Excel spreadsheet

It is my understanding based on information provided by the Department of Technology that a requester may want an Excel spreadsheet other than in PDF in order to understand the formulas that the department uses in the spreadsheet. Formulas in spreadsheets can range from simple addition to complex calculations. As the author inserts numbers (for example, to calculate interest payments due), the Excel program calculates the conclusion based on the formula. The author can insert revised numbers (for the interest rate or number of months paid) and obtain a revised calculation, based on the same formula.

Again, based on information provided by the Department of Technology, I understand that another reason that a requester may want an Excel spreadsheet is to import and place data from the spreadsheet, which is arranged in rows and columns, into another program. A method of allowing text from an Excel spreadsheet to be imported into another program, so that the grid-like layout is retained, is to convert the Excel spreadsheet to "tab delimited format."

I am informed that the Department of Technology has no objection to providing you with a brief written description of the formula used in the spreadsheet or transmitting the spreadsheet to you in tab delimited format.

Please let Barry Fraser of the Department of Technology know if you want either a brief written description of the formula used in the spreadsheet or to obtain the spreadsheet in tab delimited format.

In light of the reasoning of the prior opinion of the City Attorney's Office, and in light of the Department of Technology's having provided you with the spreadsheet that you requested in PDF, and its willingness to

provide the additional information described above, the Supervisor of Records denies your petition.

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CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

MATT DORSEY
Public Information Officer

January 12, 2006

Mr. Kimo Crossman
Transmitted via email and U.S. Postal Service

Dear Mr. Crossman:

Over the past several months, you have made more than 50 public records requests to a number of City departments, including the Department of Telecommunications and Information Systems (DTIS), the San Francisco Public Utilities Commission (SFPUC) and this office. Beginning with documents relating to the wireless broadband component of the TechConnect initiative, your requests have subsequently expanded in scope, complexity and frequency to include, most recently, documents related to every public records request received by the City Attorney's Office over the last two years.

Many of your requests include numerous subparts—in some cases, as many as eleven—which, together with related questions, easily push your total number of discrete requests into the hundreds. As you know, almost all of your requests are styled as "immediate disclosure requests," demanding a response by the close of business the following day, placing immediate and inescapable burdens on City employees, and hampering the ability of the departments to perform their functions. More recently you have quarreled with the specific format of electronic documentation the City has already provided you. You have insisted on the provision of electronic "metadata" from emails and other documents requiring technical expertise far beyond that of most standard office program end-users (myself included) and that may implicate attorney work-product privileges or other prohibitions against disclosure. You make insufficiently specific references to questions buried in email chains so lengthy and heavily annotated as to be virtually incomprehensible.

By now you are well aware that your requests have placed enormous burdens on the resources of this office as well as other city departments. We have responded to your requests diligently and courteously, and have devoted as many resources as could be made available to the tasks your requests have required: analysis of increasingly complex requests; consultation with persons who could assist in providing responses; searching for potentially responsive records; reviewing records when located; preparing written responses to your requests; and disseminating responsive records. In some instances, this office and our client departments have been able to provide a complete response within a single business day. In other instances, we have found it necessary to invoke a 14-day extension permitted under certain circumstances.

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Mindful of our obligations to all the residents of San Francisco and the considerable time and resources we have already devoted to responding to your requests, this letter serves to notify you that the City Attorney has advised our client departments that they may limit the time they spend responding to your public records requests to a reasonable amount of time that permits them to perform their other duties. This office similarly intends to limit the time we spend responding to your public records requests as necessary to allow us to perform our other work.

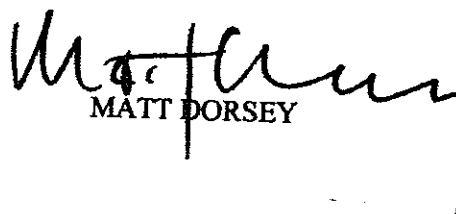
We will also advise our client departments that, before they devote significant resources to responding to your new requests, they should complete their responses to your outstanding requests. Our office will follow the same procedure. Given the volume, scope and frequency of your requests, which show no signs of abating, this reasonable allocation of resources will inevitably result in missed deadlines. If you wish our client departments or our office to focus on a new request, then you should inform us that you wish us to suspend work on prior requests in order to address the new one.

I finally wish to express that we take these steps reluctantly and only after ten weeks of unrelenting and burdensome requests. In recent years, this office has been widely praised for its commitment to Sunshine and open government. Indeed, the current City Attorney broke longstanding tradition in making legal opinions available online. He began publication of an annual Good Government Guide, and dramatically expanded Sunshine training for city officials. He ended the practice of representing department heads in hearings before the Sunshine Ordinance Task Force. And he insisted that the public information office he hired me to lead continues to earn its reputation as one of City government's most accessible and responsive to the news media and public it serves.

As an office deeply committed to open government and public scrutiny—including transparency in the City's contracting process—we are profoundly saddened that what appears to be a vexatious abuse of the San Francisco Sunshine Ordinance has forced the assertion of a limiting principle; in this case, the doctrine of implied rule of reason, well established in California case law, which sets reasonable limits for responding to public records requests.

We invite reasonableness in your future public records requests to enable us to complete our responses to those already outstanding. Further, we hope you will consider withdrawing or narrowing some of your prior public records requests to facilitate the City's ability to respond to your core requests, and we welcome your guidance in identifying priorities among your multiple requests already queued for response.

Sincerely,


MATT DORSEY