

Date: Jan. 27, 2009

Item No. 7  
File No. \_\_\_\_\_

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Supervisor of Records report**
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Completed by: Chris Rustom

Date: Jan. 23, 2009

**\*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.

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## MEMORANDUM

TO: Honorable Members  
Sunshine Ordinance Task Force

FROM: Paula Jesson *PJ*  
Deputy City Attorney

DATE: December 18, 2008

RE: Ninth Annual Report of the Supervisor of Records  
October 1, 2007 – September 30, 2008

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### INTRODUCTION

The Sunshine Ordinance (S.F. Admin. Code, Chapter 67) requires that the Supervisor of Records prepare a tally and report for the Sunshine Ordinance Task Force at least annually on each petition brought before the Supervisor of Records for access to records or information. (S.F. Admin. Code §67.21(h).) "The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued." (*Id.*)

Please note that the format of this report differs from last year's, which described the determinations of the Supervisor of Records in the descriptive portion of the memorandum and, in addition, included copies of the determinations in the appendix. Also, last year's appendix included copies of the petitions, as well as additional communications between petitioners and the Supervisor of Records.

This year's report pares down the both the memorandum and the appendix to focus on the determinations and avoid unnecessary duplication. The petitions are not included in the appendix but are described in the memorandum. Determinations are included in the appendix but not copies of records that the department agreed to produce that were sent with the determination. Fewer communications to and from petitioners are included in the appendix, but are described in the report where helpful to understand the issues involved in the matter. If the Task Force has an interest in obtaining copies of particular communications that are only described in the memorandum or a complete chain of email messages that is only partially described or included in the appendix, we will be happy to provide copies of the communications.

### DESCRIPTION OF PETITIONS AND THEIR RESOLUTION

This is the ninth report of the Supervisor of Records. It covers all petitions brought before the Supervisor of Records between October 1, 2007 and September 30, 2008 (the "reporting period"). No court decisions issued regarding determinations by the Supervisor of

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Records for the reporting period and the Supervisor of Records had no occasion to issue an order to any City department whose records were the subject of a petition. For the custodian of records, this report gives the name of the employee who responded to the request.

The petitions and determinations are arranged into 30 sections. However, the Supervisor of Records made more than 30 determinations during the reporting period. Some of the petitions (most commonly those filed by Kimo Crossman) eventually evolved into a series of additional clarifications or questions requiring multiple responses. For purposes of numbering petitions, this report treats the initial question and all questions that evolved from it as one petition.

1. Petitioner: Kimo Crossman  
Department: City Attorney's Office  
Records sought: Email addresses in the Eighth Annual Supervisor of Records Report; copies of court decisions referenced in a letter from the City Attorney's Office regarding privacy interests in personal email addresses
  
- Custodian of Records: Paula Jesson

The attachments to the Eighth Annual Supervisor of Records Report contained copies of various email messages with some of the email addresses redacted. On December 10, 2007, Mr. Crossman filed a petition with the Supervisor of Records, contending that the redactions were unwarranted.

On December 5, 2007, the Supervisor of Records informed Mr. Crossman that she agreed that some of the redacted email addresses were not personal and could be released without violating the senders' right to privacy. She offered to produce a less redacted version but informed Mr. Crossman that she would not release personal email addresses because of the right to privacy of those persons who used personal addresses, referring to this office's opinion in a letter of May 15, 2007. (Appendix, Page 1.) On December 6, 2007, Mr. Crossman asked for the May 15, 2007 letter and that his request for a less redacted copy of the attachments be put on hold.

Mr. Crossman then asked on December 6, 2007 for "the case law, slip opinions and other decisions that are referenced" in the May 15, 2007 letter regarding privacy interests in personal email addresses. On December 10, 2007, the Supervisor of Records informed Mr. Crossman that the City Attorney's office declined to provide the decisions for several reasons. First, the Sunshine laws do not require the City Attorney's office to do legal research for, or to share its legal research with, members of the public. Second, the Sunshine laws do not make officially issued decisions of courts of law that happen to be in the possession of a public agency the "public records" of that agency. Third, even if this office had hard copies of court decisions maintained in a deputy city attorney's files, in the unlikely event that they would be considered "public records," they would be protected from disclosure by the attorney work product doctrine. (Appendix, Pages 2-3.)

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Although Mr. Crossman had been communicating on this matter with the Deputy City Attorney assigned to serve as Supervisor of Records, on December 11, 2007, Mr. Crossman sought a determination from the Supervisor of Records that the City Attorney's Office is required to allow him to inspect the court decisions. The Supervisor of Records replied on December 24, 2007 [although the second and third pages of the memorandum are dated January 2, 2008], finding that, first, neither the Public Records Act nor the Sunshine Ordinance requires the City Attorney's Office to produce, or permit inspection of, publicly available court decisions and, second, that even if this were not the case, copies of court decisions cited in the opinion are protected by the attorney work product doctrine. The Supervisor of Records also informed Mr. Crossman how he and other members of the public could obtain free access to court decisions on internet websites and at the San Francisco Law Library. (Appendix, Pages 4-6.)

On December 26, 2007, Mr. Crossman sent an email message, arguing that a court decision cited in the response to him, *County of Los Angeles v. Superior Court*, 82 C.A.4<sup>th</sup> 819, 833 (2000), is irrelevant, that "the city instructs its staff including attorneys to waive the privileged communication and Work Product doctrines," and that the attorney work product doctrine does not apply to communications regarding the Public Records Act or the Sunshine Ordinance.

On January 7, 2008, the Supervisor of Records informed Mr. Crossman that the determination on this matter was unchanged. (Appendix, Pages 7-9.)

2. Petitioner: Laura Carroll  
Department: Mayor's Office of Housing  
Records sought: Records relating to the City's Condo Conversion Program  
Custodian of Records: Douglas Shoemaker

By letter dated December 18, 2007, Laura Carroll asked the Supervisor of Records to determine whether the Mayor's Office of Housing ("MOH") properly withheld documents based on the attorney-client privilege. This request was the first of several communications between Ms. Carroll and the Supervisor of Records because of disagreement between Ms. Carroll and MOH regarding the scope of Ms. Carroll's request for records. Ultimately, MOH agreed to review all its records relating to the City's Condo Conversion Program and the Supervisor of Records reviewed all records relating to the Program that MOH believed were subject to the attorney-client privilege.

The Supervisor of Records determined that the vast majority of records were properly withheld under the attorney-client privilege. The Supervisor of Records also determined that some were not covered by the privilege, even though a deputy city attorney sent or received the communications. In some cases, the record had both confidential and non-confidential communications and the non-confidential portion was reasonably segregable and should be disclosed. In some cases, the communication was shared with someone outside the City, or involved a minor clerical matter, evidencing the fact that it was not intended to be confidential. These determinations are in letters dated January 7, February 29, April 21, and June 10, 2008. (Appendix Pages 10-20.)

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The January 7 and February 29, 2008 responses addressed several other issues that Ms. Carroll had raised. First, Ms. Carroll expressed concern that MOH had not provided her with a letter from the City Attorney's Office regarding redactions that had been made based on the attorney-client privilege. Ms. Carroll indicated that it was her understanding that such a letter is required. The Supervisor of Records informed Ms. Carroll that there is no such requirement, although it is not unusual for deputies to confer with departments to help them determine whether the attorney-client or other privilege applies. She further informed Ms. Carroll that there was no letter or other document from the City Attorney's Office relating to MOH's withholding of records in response to her request based on the attorney-client privilege. (Appendix, Page 12.)

Second, Ms. Carroll questioned why certain records that MOH had provided to her had not been provided earlier. She also asked for assistance in getting MOH to comply with her request to "produce information on withheld documents in accordance with Sunshine Ordinance section 67.21c . . . ." The Supervisor of Records informed Ms. Carroll that she was not addressing these issues. When acting as Supervisor of Records, the role of the City Attorney's Office is to determine whether "the record requested, or any part of the records requested, is public." S.F. Admin. Code §67.21(d). The questions raised by Ms. Carroll were not within the limited role given the Supervisor of Records under the Sunshine Ordinance. (Appendix, Pages 12 and 17.)

Third, Ms. Carroll asked for confirmation that her petition had been reviewed by a "neutral party" who was not "the attorney or any staff that MOH has worked with regarding the proposed MOH policy and procedure changes" relating to the Condo Conversion Program. The Supervisor of Records informed Ms. Carroll that she had not worked with MOH regarding the proposed MOH policy and procedure changes. (Appendix, Page 18.)

In addition, on May 19, 2008, after the Supervisor of Records sent the April 21, 2008 letter, Ms. Carroll asked whether she could obtain from MOH the number of pages being withheld under the attorney-client privilege and, at a minimum, the header information for email and the equivalent information for hard copy records. On May 23, 2008, the Supervisor of Records informed Ms. Carroll that as to number of pages, she could request this information from MOH, although MOH may not be legally required to provide it. As to the header information, the Supervisor of Records informed Ms. Carroll that MOH is not required to provide this information. City departments are required to provide the basis for withholding records but need not "go further and describe each of the documents falling within the statutory exception," citing *Haynie v. Superior Court* (2001) 26 C.4<sup>th</sup> 1061, 1074. (Appendix, Page 21.)

3. Petitioner: Kimo Crossman  
Department: District Attorney's Office  
Records sought: District Attorney's calendar  
Custodian of  
Records: Paul Henderson

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On January 3, 2008, Mr. Crossman asked for a determination by the Supervisor of Records regarding his request for the District Attorney's calendar.

On January 18, 2008, the Supervisor of Records responded, noting that the material attached to Mr. Crossman's petition indicates that Mr. Henderson from the District's Attorney's office contacted Mr. Crossman on December 19, 2007 to inform him that he was in the process of identifying and locating the records in question; that the petition did not indicate whether the District Attorney's office ever provided a substantive response; that the Supervisor of Records was informed by the District's Attorney's office that they had inadvertently failed to respond to Mr. Crossman's request and provided assurance that they would respond by early in the following week; and that should a response not be forthcoming, Mr. Crossman could contact the Supervisor of Records. (Appendix, Page 22.)

On January 18, 2008, Mr. Crossman sent an email message asking "how long it takes to provide calendar records . . . [e]specially since the request was for rolling incremental delivery . . ." and requesting "a ruling on whether these records are public . . ."

On January 23, 2008, the Supervisor of Records responded, noting that Section 67.29-5 of the Sunshine Ordinance provides that the calendars of public officials are public records. (Appendix Page 23.)

4. Petitioner: Kimo Crossman  
Department: City Attorney's Office  
Records sought: Buck Delventhal meeting with Supervisor Maxwell<sup>1</sup>  
Custodian  
of Records: Alexis Thompson

On January 1, 2008, Mr. Crossman filed a petition regarding his request to the City Attorney's Office for "all materials related to the Buck Delventhal meeting on 10/9 're Board of Sups Sunshine Task Force hearings re Sup Peskin and Maxwell." The request also asked for "any materials or communications before or after this meeting relating to the matters discussed."

On January 10, 2008, the Supervisor of Records informed Mr. Crossman that the petition was premature because the City Attorney's Office had not yet completed its review or responded to the request and that once it had done so, if any records were withheld, Mr. Crossman could appeal the denial at that time. (Appendix, Page 24.)

The City Attorney's Office responded to Mr. Crossman's request on February 14, 2008, informing Mr. Crossman that the "meeting" was an email exchange among several Deputy City Attorneys and that the email messages were being withheld under the work product doctrine.

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<sup>1</sup> The four public records requests made by Mr. Crossman described in Nos. 4 through 7 were also the subject of complaints that Mr. Crossman filed with the Sunshine Ordinance Task Force, which found violations of the Sunshine Ordinance. The Task Force then filed complaints regarding these matters with the Ethics Commission. After an investigation, the Ethics Commission dismissed the complaints.

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The City Attorney's Office also informed Mr. Crossman that the office had located email inquiries from clients that instigated the email discussion and it provided a copy of those communications. However, one page of these email messages had two parts redacted on the ground that the redacted material consisted of communications about matters that were not the subject of the email discussion, were unrelated to public records, public meetings or ethics issues, and were protected by the attorney-client privilege.

Mr. Crossman filed a complaint with the Sunshine Ordinance Task Force regarding the office's response to his public records request. In a March 27, 2008 Order of Determination, the Sunshine Ordinance Task Force found that the City Attorney's Office had violated Sections 67.21(i) and 67.24(b)(1)(iii) of the Sunshine Ordinance by improperly redacting information from the email based on the attorney-client privilege and work product doctrine and ordered the release of the records without redactions. On April 9, 2008, Mr. Crossman filed a petition with the Supervisor of Records, asking for a justification for "any further withholdings taking into account the independent authority of [the Sunshine Ordinance Task Force] to adjudicate these matters."

The Supervisor of Records responded to Mr. Crossman's petition on April 16, 2008, noting that the Sunshine Ordinance Task Force had misunderstood the basis for the City Attorney's Office decision to redact information. The Task Force had understood that the redactions were made under the work product doctrine (rather than just the attorney client privilege) and that the redacted material involved Sunshine matters. In fact, as noted above, the redactions were made based only on the attorney-client privilege and the redacted material was unrelated to public records, public meetings or ethics issues. The Supervisor of Records determined that the redacted material constituted confidential information protected by the attorney-client privilege, and that the response by the City Attorney's Office was lawful. (Appendix, Page 25-26.)

Mr. Crossman then asked the Supervisor of Records to determine whether the City Attorney's Office properly withheld email exchanges among Deputy City Attorneys based on the attorney work product doctrine. On April 28, 2008, the Supervisor of Records informed Mr. Crossman of her determination that the records were properly withheld under that doctrine. (Appendix, Page 27.)

5. Petitioner: Kimo Crossman  
Department: City Attorney's Office  
Records sought: Correspondence with Sunshine Ordinance Task Force Member  
Custodian  
of Records: Alexis Thompson

On January 3, 2008, Mr. Crossman filed a petition regarding his request to the City Attorney's Office for records "with or about or provided to Harrison Sheppard the new SOTF member."

On January 10, 2008, the Supervisor of Records informed Mr. Crossman that the petition was premature because the City Attorney's Office had not yet completed its review or responded



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to the request and that once it had done so, if any records were withheld, Mr. Crossman could appeal the denial at that time. (Appendix, Page 24.)

The City Attorney's Office responded to Mr. Crossman's request on February 26, 2008. (Appendix, Page 28.)

6. Petitioner: Kimo Crossman  
Department: City Attorney's Office  
Records sought: Communications and advice to the Clerk of the Board  
Custodian  
of Records: Alexis Thompson

On January 3, 2008, Mr. Crossman filed a petition regarding his request for "all communications and advice provided to Angela Calvillo, Clerk of the Board regarding matters related to Open Government, public records, Sunshine Taskforce or privacy . . . ."

On January 10, 2008, the Supervisor of Records informed Mr. Crossman that the petition was premature because the City Attorney's Office had not yet completed its review or responded to the request and that once it had done so, if any records were withheld, Mr. Crossman could appeal the denial at that time. (Appendix, Page 24.)

The City Attorney's Office responded to Mr. Crossman's request on February 25, 2008. (Appendix, Page 29.)

7. Petitioner: Kimo Crossman  
Department: City Attorney's Office  
Records sought: Communications with District Attorney  
Custodian  
of Records: Alexis Thompson

On January 3, 2008, Mr. Crossman filed a petition regarding his request for records of "communications and advice for the period of May 2007 – Present with the San Francisco District Attorney's Office regarding matters related to Open Government, public records, Sunshine Taskforce or privacy . . . ."

On January 10, 2008, the Supervisor of Records informed Mr. Crossman that the petition was premature because the City Attorney's Office had not yet completed its review or responded to the request and that once it had done so, if any records were withheld, Mr. Crossman could appeal the denial at that time. (Appendix, Page 24.)

The City Attorney's Office thereafter responded to Mr. Crossman's request on March 6, 2008, informing him that it was withholding the records based on the attorney-client privilege. (Appendix, Pages 30-32.) On March 11, 2008, Mr. Crossman filed a petition regarding the response by the City Attorney's Office. On March 24, 2008, the Supervisor of Records determined that the City Attorney's Office properly withheld the records based on the attorney-client privilege in light of the written directive by the holder of the privilege, the District

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Attorney's Office, not to publish the communications and state laws requiring attorneys to maintain the confidentiality of communications protected by the privilege. (Appendix, Page 33-34.)

On March 25, 2008, Mr. Crossman raised further arguments in support of his position (Appendix Pages 35-36) and on March 25, 2008, the Supervisor of Records confirmed her determination that the records may be lawfully withheld. (Appendix, Pages 35.)

The response by the City Attorney's Office to Mr. Crossman's request was also considered by the Sunshine Ordinance Task Force, which determined that the records are public and should have been produced. On April 9, 2008, Mr. Crossman filed another appeal, based on the determination of the Task Force.

On April 24, 2008, the Supervisor of Records responded to Mr. Crossman's petition, informing him that she remained of the opinion that his petition should be denied. (Appendix, Page 37.)

On April 21, 2008, Mr. Crossman filed a petition regarding his request to the City Attorney's Office for the "From, To and Date" information from the records of communications with the District Attorney's Office that were being withheld. The Supervisor of Records responded on April 28, 2008, determining that the City Attorney's Office properly declined his request under the reasoning of the California Supreme Court in *Haynie v. Superior Court* (2001) 26 C.4<sup>th</sup> 1061. In that case, the court held that a public agency is required under the California Public Records Act to provide the basis for withholding records, but is not required "to go further and describe each of the documents falling within the statutory exception." *Haynie, supra*, 26 C.4<sup>th</sup> at 1074. The Supervisor of Records found that nothing in the Sunshine Ordinance requires a different result from that held to apply to the California Public Records Act. (Appendix, Page 38.)

8. Petitioner: Kimo Crossman  
Department: Mayor's Office  
Records sought: Communications to and from the Mayor regarding the oil spill  
Custodian  
of Records: Joe Arellano

On January 10, 2008, Mr. Crossman filed a petition regarding his request to the Mayor's Office for "all communications to/from Gavin Newsom regarding the recent Oil Spill during the time he was in Hawaii . . . [including] faxes, instant messages, emails, text messages, and voicemails." Mr. Arellano had responded to the request, informing Mr. Crossman that the Mayor's Office declined to provide access to "text messages that appear on privately owned phones" and informed Mr. Crossman that there were otherwise no documents responsive to his request.

On January 23, 2008, the Supervisor of Records responded to the petition, finding that the text messages do not constitute public records within the meaning of the California Public

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Records Acts and Sunshine Ordinance and therefore that the Mayor's Office had lawfully withheld the records. (Appendix, Page 39.)

9. Petitioner: Christian Holmer  
Department: Mayor's Office  
Records sought: Press releases in requested format  
Custodian of  
Records: Joe Arellano

On February 6, 2008, Mr. Holmer filed a petition regarding his request for press releases from the Mayor's Office in specified file formats.

On February 19, 2008, the Supervisor of Records informed Mr. Holmer that the Mayor's Press office had informed her that it would send the information in the requested format.

10. Petitioner: Thomas Peele, Reporter, The Chauncy Bailey Project  
Department: Adult Probation Department  
Records sought: Sign in sheets for meeting with probation officers  
Custodian of  
Records: Patrick J. Boyd

On January 29, 2008, Mr. Peele filed a petition regarding his request for "[t]he sign in sheets for room 200 of the City and County of San Francisco Adult Probation Department between July 30, 2007 and Aug. 10, 2007."

The Adult Probation Department had declined to produce the sign in sheets on the ground that they "represent a portion of those records maintained regarding a probationer's conduct during the term of probation and thus 'constitute a part of the records of the court.' (California Penal Code section 1203.10)"

On February 8, 2008, the Supervisor of Records upheld the decision of the Adult Probation Department. (Appendix, Pages 40-42.)

11. Petitioner: Christian Holmer  
Department: Mayor's Office  
Records sought: Daily press releases  
Custodian of  
Records: Joe Arellano

On April 11 and July 11, 2008, Mr. Holmer filed petitions regarding his regularly submitted requests to the Mayor's Office for "a Weekly List of Press and Public Records Requests." The Supervisor of Records discussed Mr. Holmer's requests with the Mayor's Office and, upon Mr. Holmer's confirmation that the Mayor's Office was responding to the requests, closed these appeals without written determinations.

12. Petitioner: Dee Modglin

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Department: Mayor's Office of Housing  
Records sought: Records involving the Low & Moderate Income Condo  
Conversion Program

Custodian  
of Records: Douglas Shoemaker and Ruby Harris

On February 22, 2008, Ms. Modglin asked the Supervisor of Records several questions regarding her public records request to the Mayor's Office of Housing. She asked (1) for "verification that all emails from and to Matt Franklin and Marvelin Rance no longer exist" and (2) whether there is "a record retention requirement of such communication/documents that pertain to the administration and sometimes also specific CCP units? If so, how long?" and (3) "Also, can you identify the number and type of documents that have been withheld under attorney client privilege pertaining to all the LMI CCP units and communications whether hard copy of [sic] electronic?"

On March 3, 2008, the Supervisor of Records informed Ms Modglin that the issues she raised do not fall within the jurisdiction of the Supervisor of Records. (Appendix, Pages 43-44.)

13. Petitioner: Kimo Crossman  
Department: DTIS  
Records sought: Communications between the City and EarthLink or Google  
Custodian  
of Records: Ron Vinson

On February 27, 2008, Mr. Crossman filed a petition to the Supervisor of Records regarding his request to DTIS for "all the email communications between the city and EarthLink or Google either during the Contract negotiations or beforehand."

On March 20, 2008, the Supervisor of Records informed Mr. Crossman that she had received an email from Ron Vinson at DTIS indicating that Mr. Vinson was forwarding documents to Mr. Crossman responsive to his request and that his appeal therefore had become moot.

14. Petitioner: Andrew Scott  
Department: Department of Emergency Management  
Records sought: Various records relating to the MGT of American staffing study  
Custodian  
of Records: Carol S. Bernard

By letter dated February 15, 2008, Mr. Scott appealed to the Supervisor of Records the withholding of various records relating to a staffing study that was conducted for the Department of Emergency Management by MGT of America.

On March 11, 2008, the Supervisor of Records responded to the appeal, noting that she had been provided with a copy of a letter from the Department stating that it would provide the requested records and therefore finding that the appeal had become moot.

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15. Petitioner: Kimo Crossman  
Department: DTIS  
Records sought: Unredacted copy of an email  
Custodian  
of Records: Ron Vinson

On March 2, 2008, Mr. Crossman filed a petition regarding the redaction of an email that DTIS had provided to him, asking for a determination that the email should have been provided in unredacted form.

On March 10, 2008, the Supervisor of Records informed Mr. Crossman that she had received a copy of an email to him from Ron Vinson of DTIS stating that he had been unable to locate the original email in unredacted form, but providing the information that had been redacted. The Supervisor of Records informed Mr. Crossman that his appeal had therefore become moot.

17. Petitioner: Kimo Crossman  
Department: City Attorney's Office  
Records sought: Billing records regarding a Public Records Act presentation at a City Attorneys Conference  
Custodian  
of Records: Alexis Thompson

On April 4, 2008, Mr. Crossman filed a petition regarding his request for "all records in their native format generated by [the City Attorney's Office] for the presentation by Mr. Zarefsky at the May 4<sup>th</sup> 2007 [sic] City Attorneys Spring Conference" and "any subsequent emails or reports as a result of the presentation." The petition stated that the City Attorney's Office had not responded to the request.

On April 16, 2008, the Supervisor of Records informed Mr. Crossman that she had received a copy of an email to him from Alexis Thompson responding to his request. The Supervisor of Records informed Mr. Crossman that his appeal had therefore become moot.

18. Petitioner: Kimo Crossman  
Department: City Attorney's Office, Mayor's Office of Criminal Justice,  
Controller's Office, District Attorney's Office  
Records sought: Records relating to federal grant for border crimes prosecutions  
Custodian of  
Records: Matt Dorsey

On April 11, 2008, Mr. Crossman filed a petition regarding his request to the Mayor's Office of Criminal Justice for records relating to a dispute over federal grant money for border crime prosecutions.

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On April 24, 2008, the Supervisor of Records responded, informing Mr. Crossman that she had been provided with an email to him from Matt Dorsey, the Press Secretary for the City Attorney's Office, informing Mr. Crossman that the City Attorney's Office would be working in conjunction with the different City agencies involved with the federal grant program to provide a coordinated response to requests for records relating to it. The letter also indicates that Mr. Dorsey was providing Mr. Crossman with records and would continue the process of gathering and evaluating documents that may be responsive and of providing him with nonexempt records promptly as they become available. The Supervisor of Records informed Mr. Crossman that in light of these facts his petition was premature but he could file a petition at a later time if the City Attorney's Office were to inform him that it had responsive records that it was not producing based on a claim of exemption. (Appendix, Page 45.)

On April 24, 2008, Mr. Crossman responded, arguing that the role of the Supervisor of Records "is indeed more than just determining if a record is discloseable or not . . . The ordinance is clear that the role includes obtaining discloseable records that have been partially or not produced at all requires you to refer the matter to the AG and DA." Mr. Crossman noted that responding to public records "is a regular job duty of every city employee," that the request "is now 15 days old and no easily producible relevant emails have been produced," that "[t]his is in [sic] incomplete and failed response . . ." and that "an Order from the Supervisor of Records is now overdue since the Appeal was submitted 4/11/08."

Mr. Crossman sent another message urging a response to his appeal on April 27, 2008.

Also on April 27, 2008, Mr. Crossman filed petitions complaining that the Controller's and District Attorney's offices had not provided records relating to the federal grant program in response to his request.

On April 28, 2008, the Supervisor of Records responded to Mr. Crossman's April 24, 2008 email arguing that the Supervisor of Records has a duty to respond to a petition based on a department's failure to comply, or comply completely, with a public records request. She informed Mr. Crossman that there may be circumstances where inaction or an incomplete response warrants a determination. But in this case, the records of the federal grant program were subject to multiple requests and were held by multiple departments, the various departments had arranged a coordinated response, the City had provided some key documents by posting them on the City Attorney's website, and Mr. Crossman had been informed that the City was in the process of gathering and evaluating a large number of documents and that would be provided nonexempt responsive records as promptly as they became available. Under these circumstances, the Supervisor of Records considered the petition premature. (Appendix, Page 46.)

Mr. Crossman filed several further messages complaining that he had not been provided with an adequate response to his request.

On July 22, 2008, the Supervisor of Records informed Mr. Crossman that she had received a copy of a message that Mr. Dorsey had sent him on July 11, 2008, transmitting a number of records relating to the federal grant program and re-stating that the City Attorney's

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Office is the point of contact for public records requests on this matter. Mr. Dorsey also noted that the City Attorney's Office had provided Mr. Crossman with numerous key documents, that there remained voluminous additional responsive documents related to the City's participation over several years in the program, that his request was extremely broad and vague as to the specific records sought, and that the City Attorney's Office limits to a reasonable amount of time what it spends responding to his requests to permit the office to perform its duties. Mr. Dorsey further noted that the City Attorney's Office would produce additional records on an incremental basis and Mr. Crossman may at any time narrow or prioritize his request. The Supervisor of Records informed Mr. Crossman that if in the course of responding to his request the City Attorney's Office were to inform him that it had responsive records that it was not producing based on a claim of exemption, he could file a another petition. (Appendix, Page 47.)

19. Petitioner: Kimo Crossman  
Department: Department of Administrative Services  
Records sought: Unredacted version of an email  
Custodian  
of Records: Rohan Lane

On April 18, 2008, Mr. Crossman filed a petition regarding his request for copies of written communications on the videostreaming demonstration of a meeting before a committee of the Board of Supervisors. Mr. Lane had provided a document responsive to the request but redacted certain information (the call-in telephone number for the demonstration) on the ground that it might be proprietary information and therefore subject to an exception to disclosure requirements.

On May 8, 2008, the Supervisor of Records informed Mr. Crossman that she had been informed that Mr. Crossman had been provided with the redacted information and that his appeal had therefore become moot.

20. Petitioner: Kimo Crossman  
Department: City Attorney's Office  
Records sought: Advice on disclosing records of unredacted phone bills  
Custodian  
of Records: Matt Dorsey

On April 25, 2008, Mr. Crossman filed a petition with the Supervisor of Records regarding his request to the City Attorney's Office for certain records regarding unredacted telephone bills. Further messages between Mr. Crossman and the office clarified that the request was for "any written advice the City Attorney provided the Supervisors on their responsibility to turn over call detail records in 2002 as well as any subsequent advice to any city officials on their responsibility to provide this information including the Mayor and department heads."

On May 9, 2008, in response to a question from Mr. Crossman about the status of a "number of other appeals" that he had filed, the Supervisor of Records informed him that she would consider an appeal regarding his request for records of advice on unredacted phone bills after the City Attorney's Office had responded to it. (Appendix, Page 48.) Mr. Crossman

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complained that a response to his petition was overdue and that the failure to respond was a violation of the Sunshine Ordinance. In response, also on May 9, 2008, the Supervisor of Records reminded him that the City Attorney's Office "has found it necessary to limit the time spent responding to [his] requests" for the reasons that had been provided to him in several communications from the office. (Appendix, Pages 49.)

On June 9, 2008, the City Attorney's Office informed Mr. Crossman that the only records responsive to the request were submitted to the Board of Supervisors in connection with a closed session on March 4, 2008 regarding threatened litigation and that the records were protected by the attorney client privilege. (Appendix, Page 50.)

On June 23, 2008, the Supervisor of Records informed Mr. Crossman that she had been provided with the June 9, 2008 message responding to the request and that the appeal regarding the office's non-response was therefore moot. (Appendix, Page 51.)

Mr. Crossman then sent additional messages challenging the withholding of the records; stating that it is "not clear there was ever a serious threat of litigation" and asking "what proof [is there] of threatened litigation" and stating that "Open Government advice is not confidential information in the first place." (Appendix, Pages 52-54)

On July 28, 2008, the City Attorney's Office provided Mr. Crossman with the agenda item from the March 4, 2008 meeting of the Board of Supervisors providing the basis for the closed session to consider anticipated litigation to receive advice regarding a request for disclosure of unredacted telephone bills. (Appendix, Page 55.)

21. Petitioner: Kimo Crossman  
Department: Ethics Commission  
Records sought: Communications between the Executive Director and Commissioners  
Custodian of Records: John St. Croix

On April 29, 2008, Mr. Crossman filed a petition regarding his request for all communications between the Executive Director of the Ethics Commission and any Ethics Commissioner from April 20 through April 26, 2008. Mr. Crossman stated that he had received no response to his request.

On May 8, 2008, the Supervisor of Records informed Mr. Crossman that she had received a copy of a response from the Executive Director of the Ethics Commission informing Mr. Crossman that his office had no documents responsive to the request and that the matter had become moot.

22. Petitioner: Kimo Crossman  
Department: City Attorney's Office  
Records sought: Records relating to public records presentations and training materials by a deputy city attorney



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Custodian  
of Records: Alexis Thompson

On April 9, 2008, Mr. Crossman filed a petition regarding his request for "all billing records associated with the creation of an actual presentation of [documents relating to a presentation by Deputy City Attorney Paul Zarefsky on 'Current Issues in Responding to Public Records Requests'] incurred by [the City Attorney's Office]. The petition stated that Mr. Crossman had received no response to the request.

On April 16, 2008, the Supervisor of Records informed Mr. Crossman that she had received a copy of an email sent to him by Ms. Thompson on April 14, 2008 responding to the request, and informed him that the matter had become moot. (Appendix, Page 56.)

On May 9, 2008, Mr. Crossman filed an appeal relating to his request for "all emails and attachments in their original electronic format which Mr. Zarefsky was a party to, that related to the Current Issues presentation "and any other public talks or writings by him on these concepts in 2007 or 2008."

On June 3, 2008, the Supervisor of Records responded to Mr. Crossman's petition, recounting the records he had requested and the response by the City Attorney's Office and informing him that the matter had become moot. (Appendix, Page 57.)

On June 3, 2008, Mr. Crossman sent a message informing the Supervisor of Records that he had sent a message to Ms. Thompson on May 29, 2008, to which he had no response, stating that it was his impression that Mr. Zarefsky had "provided advice for creation or presentation of various training materials or handbooks or other outside professional activities" and that he was interested in any records relating to them." Mr. Crossman sent further messages in June and July continuing to seek a response.

On October 7, 2008, Mr. Crossman filed another petition on this request.

The City Attorney's Office sent a response on November 3, 2008, summarizing the responses that it had made to his requests regarding this matter. The Supervisor of Records informed Mr. Crossman that in light of that response, his appeal had become moot. (Appendix, Page 58.)

23. Petitioner: Kimo Crossman  
Department: City Attorney's Office  
Records sought: "Word version" of written charges in the matter of Edmund Jew  
Custodian  
of Records: Matt Dorsey

On May 24, 2008, Mr. Crossman filed a petition regarding his request for the "Word version" of a letter dated September 25, 2007 from the Mayor to the Board of Supervisors and Ethics Commission transmitting written charges of official misconduct "In the Matter of Charges

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Against Edmund Jew." Mr. Crossman's petition said that he had received no response to his request.

On June 4, 2008, the City Attorney's Office responded to Mr. Crossman's request, informing him that the office had provided the document in PDF format and that it declined to provide the "Word version" for the reasons provided in a September 19, 2006 opinion. The letter concluded that neither the Public Records Act nor the Sunshine Ordinance requires City departments to provide a record in Word.

On June 23, 2008, the Supervisor of Records informed Mr. Crossman that she had been provided with a copy of an email sent to him by the City Attorney's Office on June 4, 2008 informing him that the City Attorney's Office declined to produce the record in "Word" for the reasons provided in the September 19, 2006 opinion. The Supervisor of Records denied Mr. Crossman's petition on the ground that the office had responded to the request and the matter had become moot. (Appendix, Page 59.)

On June 30, 2008, Mr. Crossman sent a message to the Supervisor of Records citing various provisions of law in support of his argument that City Attorney's Office was unlawfully withholding the "Word version" of the requested letter. On July 15, 2008, the Supervisor of Records informed Mr. Crossman that she had reviewed the provisions he cited but determined that the opinion of the City Attorney's Office set forth in the September 19, 2006 opinion is correct. (Appendix, Page 60.)

25. Petitioner: Kimo Crossman  
Department: City Attorney's Office  
Records sought: Records related to the dispute over release of the listing of illegal billboards  
Custodian of Records: Matt Dorsey

On July 3, 2008, Mr. Crossman filed a petition with the Supervisor of Records regarding the "non-response" by the City Attorney's Office to his request for "all communications related to the dispute over the release of the listing of illegal billboards in San Francisco . . . ."

On July 30, 2008, the Supervisor of Records informed Mr. Crossman that she had been provided with email messages indicating that the City Attorney's Office had provided him with the records that he had requested, except for those withheld based on certain exemptions under State and local law, and that the matter had become moot.

26. Petitioner: Amanda Witherell  
Department: Mayor's Office of Communications  
Records sought: Plans for constructing and retrofitting power plants  
Custodian of Records: Joe Arellano

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On July 29, 2008, Amanda Witherell, a reporter with the San Francisco Bay Guardian, filed a petition with the Supervisor of Records regarding her request to the Mayor's Office of Communications for copies of documents "related to plans for constructing peaker power plants and retrofitting existing power plants owned and operated by Mirant." Ms. Witherell had received a little over 500 pages of records from the Mayor's Office of Communications, but that office had withheld records on several grounds. Ms. Witherell asked for review of the withholding of records based on two of those grounds, the right to privacy and recommendations of the author.

With respect to the right to privacy, the Supervisor of Records determined that some of the email messages had been "over-redacted" because more of the email address had been redacted than was necessary to protect the right to privacy.

With respect to the recommendations of the author, the Supervisor of Records determined that all of the records withheld on this ground were properly withheld except for portions of three records, all of which were provided to Ms. Witherell. (Appendix, Pages 61-63.)

27. Petitioner: Ann Estrada  
Department: San Francisco Fire Department  
Records sought: Unredacted Fire Investigation Report  
Custodian  
of Records: Captain Tom Harvey

By letter dated August 8, 2008, Ann Estrada, a paralegal with the firm Cozen O'Connor, filed a petition with the Supervisor of Records regarding her request for a Fire Inspection Report. The report provided by the Fire Department disclosed the names of the witnesses to the incident described in the report but not the witnesses' home and work addresses and telephone numbers. The petitioner sought an unredacted version of the report.

Thereafter, Fire Department staff provided the petitioner with all witness addresses, whether home or work, and their work telephone numbers. The remaining issue to be determined was the validity of the Fire Department's withholding of witnesses' non-work phone numbers.

On August 25, 2008, the Supervisor of Records responded, informing Ms. Estrada of her determination that Department staff lawfully withheld non-work phone numbers of witnesses based on their right to privacy. (Appendix, Pages 64-65.)

28. Petitioner: William Blake Gray  
Department: San Francisco Police Department  
Records sought: Citation and arrest reports  
Custodian  
of Records: Maureen Conefrey

By letter dated September 30, 2008, Mr. Gray filed a petition with the Supervisor of Records regarding his request to the Mission Police Station for "all citations and arrest reports

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filed by Officer Jerry Neitz in 2008 [and] all citations issued to pedestrians by the Mission Police District in 2008."

Ms. Conefrey of the Police Department's Legal Division sent a response to Mr. Gray's public records request by letter dated September 30, 2008, providing responsive records. After receiving that response, Mr. Gray informed the Supervisor of Records that Ms. Conefrey had provided seven incident reports relating to arrests by Officer Neitz. Ms. Conefrey also informed Mr. Gray, with respect to his request for all citations issued to pedestrians in 2008, that the Police Department "does not have the format or capability to search for the specific documents you are requesting."

On October 15, 2008, the Supervisor of Records responded to the petition, describing the method that Ms. Conefrey had used to search for the requested records and finding that the Police Department properly responded to the request. The response also identified additional information that, were it available to Mr. Gray, might enable the Police Department to locate the requested records. (Appendix, Pages 66-67.)

Withdrawn Petitions

In addition to petitions described above that were withdraw, the following petitions were filed with the Supervisor of Records and then withdrawn:

Petition submitted by Eduardo J. Martinez on October 18, 2007 for a copy of San Francisco Police Department records (a computer printout of all HRMS records relating to the petitioners for a specified time period) withdrawn October 30, 2007 because the Police Department had provided the records.

Petition submitted by Kimo Crossman on January 3, 2008 for DTIS records relating to a COIT meeting on a Citywide Web Policy and Email Policy withdrawn January 4, 2008 because DTIS had provided the records.

P.J.

APPENDIX

TO

NINTH ANNUAL REPORT OF THE SUPERVISOR OF RECORDS  
OCTOBER 1, 2007 – SEPTEMBER 30, 2008

Ms. Jesson

I do consent to revealing my email address on emails I sent your office. In this Appeal to you as Supervisor of Records, I have submitted additional discussions regarding this matter of redactions and ask that you make a ruling on them in this case. The 5/15/07 letter I believe was not a Supervisor of Records determination on this specific matter. As stated, I ask that your office justify these redactions with facts and specificity and applicable balancing tests. I point out that both Calaware and CFAC legal counsels have found against wholesale redactions of this personal contact info for normal business with the government. And I provided example legal cases that have dealt with this matter.

→ **From:** Paula Jesson [mailto:Paula.Jesson@sfgov.org]  
**Sent:** Wednesday, December 05, 2007 3:31 PM  
**To:** kimo@webnetic.net  
**Cc:** 'James Chaffee'; 'Allen Grossman'; 'Peter Warfield'; 'Christian Holmer'; staff@sfs.info  
**Subject:** RE: Appeal to Supervisor of Records - Redacted email addresses

Dear Mr. Crossman,

You object to the redaction of email addresses in the attachments to the Eighth Annual Supervisor of Records Report.

In fact, I agree that some of the email addresses that were redacted in the attachments are not personal email addresses, but rather business addresses, and therefore can be released without violating the owner's personal privacy. I can provide you with a less redacted version (as I will to anyone else who requests it) that shows non-personal email addresses. The release of personal email addresses implicates privacy concerns. We have analyzed this issue in depth in our May 15, 2007 letter to the Sunshine Ordinance Task Force regarding Confidentiality of Commissioner's Personal E-Mail Addresses. I will transmit a copy of that letter to you in a separate email unless you have a copy already. Our view as to the privacy of personal email addresses remains firm.

You mention that you are the author of some of the email messages included in the attachments. It is not clear to me that you are consenting to your personal email addresses being made public. If so, please let me know. If you consent, the set of further unredacted attachments that I provide to you (and would provide to any other requester) will show your personal email addresses.

Once I have your response to that question, I will prepare and send you another set. Unfortunately, it is a time-consuming process and the records with different redactions will not be ready until next week.

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) 554-6782  
Fax: (415) 554-4699  
email: paula.jesson@sfgov.org

(2000)(where court remanded action for *in camera* determination of whether sheriff's department's over-detention reports, logs tracking erroneous releases and over-detentions, and Inmate Reception Center Task Force Report were prepared by county for use in litigation); *see also City of Hemet v. Superior Court*, 37 Cal. App. 4th 1411, 1418-19, 44 Cal. Rptr. 2d 232 (1995)(where court concluded that internal investigation report of officer misconduct could not be withheld under pending litigation exemption because report was not prepared specifically for litigation; rejecting argument that documents relevant to later-instituted litigation should be exempt under pending litigation exemption); *Fairley v. Superior Court*, 66 Cal. App. 4th 1414, 1422, 78 Cal. Rptr. 2d 648 (1998)(where court remanded action for *in camera* determination of whether pre-litigation arrest records of plaintiff were prepared in anticipation of litigation).

This exemption protects not only attorney work product or documents protected by the attorney-client privilege, but also the work product of public agencies generated in anticipation of litigation. *Bd. of Trustees of the Cal. State Univ.*, 132 Cal. App. 4th at 898 (citing *Fairley*, 66 Cal. App. 4th at 1422, fn. 5; *see also Roberts*, 5 Cal. 4th at 373. While, generally, the exemption protects only documents prepared by or on behalf of the agency (see *Farley*, 66 Cal. App. 4th at 1504), it also protects correspondence between opposing counsel and parties when sought by nonparties to the action and when the parties do not intend the correspondence to be revealed outside of the litigation. *Id.* at 894.

Once the litigation is over, records not otherwise independently protected from disclosure (i.e., attorney-client documents) must be disclosed. See, e.g., City of Los Angeles v. Superior Court, 41 Cal. App. 4th 1083, 49 Cal. Rptr. 2d 35 (1996)(depositions in concluded action against city not exempt from disclosure); Register Division of Freedom Newspapers v. County of Orange, 158 Cal. App. 3d 893, 909, 205 Cal. Rptr. 92 (1984)(documents pertaining to settlement of personal injury claim against public entity, including but not limited to settlement agreement itself, were subject to disclosure).

Deposition transcripts are not exempt from disclosure under this subdivision because they are available under another statutory provision absent a protective order. *Bd. of Trustees of the Cal. State Univ.*, 132 Cal. App. 4th at 901(citing Cal. Civ. Proc. Code § 2025.570). Claims filed against a public agency under California's Tort Claims Act are not exempt from disclosure under this subdivision. *Poway Unified Sch. Dist. v. Superior Court*, 62 Cal. App. 4th 1496, 1505, 73 Cal. Rptr. 2d. 777 (1998); *see also* 71 Ops. Cal. Att'y. Gen. 235, 238 (1988).

→  
From: Paula Jesson [mailto:[Paula.Jesson@sfgov.org](mailto:Paula.Jesson@sfgov.org)]  
Sent: Monday, December 10, 2007 4:26 PM  
To: [kimo@webnetic.net](mailto:kimo@webnetic.net)

Cc: grossman [REDACTED]  
Subject: RE: May 15, 2007 letter

Dear Mr. Crossman,

You ask that this office send you the case law, slip opinions and other decisions cited in this office's May 15, 2007 letter to the Sunshine Ordinance Task Force. The Public Records Act does not require a public agency to provide this type of service to members of the public. The Act does not require the City Attorney's Office to do legal research for, or to share its legal research with, members of the public. Nor does the Act make officially issued decisions of courts of law that happen to be in the possession of a public agency the "public records" of that agency. Even where hard copies of court decisions are maintained in a deputy city attorney's files, in the unlikely event that they would be considered "public records," they would be protected from disclosure by the attorney work product doctrine, as their presence in the file is the product of the deputy's legal work. CCP Section 2018.030.

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"Kimo Crossman" <[kimo@webnetic.net](mailto:kimo@webnetic.net)>

12/06/2007 02:37 PM

To "Paula Jesson" <[Paula.Jesson@sfgov.org](mailto:Paula.Jesson@sfgov.org)>

cc <[grossman](mailto:grossman)>

Subject RE: May 15, 2007 letter

Ms. Jesson,

Would you send me the case law, slip opinions and other decisions that are referenced in this letter?

Thank you



CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA  
City Attorney

OFFICE OF THE CITY ATTORNEY

PAULA JESSON  
Deputy City Attorney

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

TO: Kimo Crossman  
FROM: Paula Jesson *PJ*  
Deputy City Attorney  
DATE: December 24, 2007  
RE: Petition to the Supervisor of Records

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This letter responds to your petition, sent by email on 12/11/2007 at 5:56 PM, for a review of this office's denial of your request to inspect the opinions and case law cited in our May 15, 2007 letter to the Sunshine Ordinance Task Force on the confidentiality of commissioners' personal e-mail addresses.

Your appeal to the Supervisor of Records raises two issues. The first is whether decisions issued by courts of law are records of the City Attorney's Office that must be disclosed under the Public Records Act or the Sunshine Ordinance. The second is whether, if the answer to the first question is "yes," the attorney work product doctrine applies to the records.

As to the first issue, in responding to your request to inspect the opinions and case law cited in the opinion letter, this office concluded that the Public Records Act does not make "officially issued decisions of courts of law that happen to be in the possession of a public agency the 'public records' of that agency." As Supervisor of Records, we affirm that determination. This office, like all law offices, has access to hard and electronic copies of court decisions. This office does not prepare or issue the decisions cited. Courts of law rather than this office create and maintain those decisions. Decisions of appellate courts are like a number of documents that this office may use in various circumstances when researching factual and legal issues and in preparing legal opinions. These documents include: federal and state statutes and administrative regulations, opinions of regulatory agencies, legal treatises, regular and specialized dictionaries, style manuals, legal and other newspapers, the City Charter and City Codes, and the laws of other jurisdictions. Any member of the public can locate these documents free of charge in public libraries or at the offices of other public agencies that must make them available to the public for inspection or copying. Neither the Public Records Act nor the Sunshine Ordinance requires this office to make such records available to the public.

We have occasionally made copies of court decisions available to members of the public as a courtesy, especially in the past when court decisions were not easily available to the public through the internet. Although we have no records one way or the other on this issue, we cannot recall every providing a copy of a court decision in response to a formal public records request. However, to provide copies of every decision this office cites in an opinion as a regular course of action, or to allow requesters to specify which court decisions this office must release, would divert our resources from responding to requests for records that we are responsible for producing and that are not readily available to the public.

Members of the public can obtain the court decisions cited in the letter that are published through internet websites, including the following:

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CITY HALL • 1 DR. CARLTON B • SAN FRANCISCO, CALIFORNIA 94102  
RECEPTION: (415) 554-4700 FACSIMILE: (415) 554-4747

## Memorandum

TO: Kimo Crossman  
DATE: January 2, 2008  
PAGE: 2  
RE: Petition to the Supervisor of Records

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<http://www.lexisnexis.com/clients/CACourts/> (California Official Reports)

<http://www.findlaw.com/> (FindLaw)

<http://www.law.cornell.edu/> (Legal Information Institute)

The first web address provided above, the California Official Reports site, also includes access to some unpublished California court decisions.

Members of the public can obtain the court decisions cited in the letter that are not published by going to the San Francisco Law Library, which makes available to members of the public an on-line legal research service. The use of this service is free for up to 90 minutes a day, in one-half hour increments (printing charges are 20 cents per page). The San Francisco Law Library has three locations (401 Van Ness Avenue, 685 Market Street and 400 McAllister Street). You can find out more information by going to the City's website and clicking on "City Agencies" and "View Complete List" and "L," which takes you to "Law Library, San Francisco."

Federal and California court decisions that are published are also available at public law libraries. Published and unpublished court decisions are also available from the clerk of the court that issued the decision.

In addition to the above, of course, you may choose to contact legal counsel to the extent that you are interested in researching legal issues. Your voluminous correspondence with the City over the past two years indicates that you are aware of and have on occasion contacted specialists, including attorneys, in open government issues.

The second issue raised in your appeal is the work product doctrine.

Even if a court were to conclude that copies of court decisions are "public records" under the Public Records Act, copies of court decisions cited in the May 15, 2007 letter could nonetheless be withheld from disclosure under the work product doctrine.

Government Code Section 6254(k) permits a public agency to withhold from disclosure "[r]ecords the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." State law exempts from disclosure records protected under the attorney work product doctrine. California Code of Civil Procedure Section 2018.030(a) provides that "[a]ny writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories shall not be discoverable under any circumstances." Section 2018.030(b) provides that "[t]he work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice."

The general policies governing the attorney work-product doctrine are set forth in Section 2018.020: "(a) Preserve the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only

## Memorandum

TO: Kimo Crossman  
DATE: January 2, 2008  
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RE: Petition to the Supervisor of Records

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the favorable but the unfavorable aspects of those cases"<sup>1</sup> and "(b) Prevent attorneys from taking undue advantage of their adversary's industry and efforts."

Copies of court decisions maintained by deputies typically contain information that reflects the attorney's "impressions, conclusions, opinions, or legal research or theories," through such indicia as notes, highlighting, and highlighted search terms from research undertaken through an on-line research service. To the extent that these records contain such indicia, they are absolutely privileged under Section 2018.030(a).

Even if the copy of the court decision were unmarked, it constitutes the attorney's work product because the attorney had to search for it, locate it, and print it out. If the record were public, the attorney would need to produce it to anyone who requested it, including other attorneys as well as opposing counsel. If a deputy city attorney were to file a motion in the course of defending litigation against the City, opposing counsel could request and obtain a copy of all the documents cited in the filed motion, thereby saving his or her own time and effort. If the City were required to provide copies to you or any other member of the public, it would be required to do the same for anyone, including an attorney who wants to avoid extra work and expense. See generally Cal. Gov. Code §6254.5. A significant purpose of the work product doctrine is to prevent others, including opposing counsel, from taking undue advantage of an attorney's industry and efforts. This policy would be undermined by turning a public law office into a copy center for court decisions.

You cite a number of cases for the proposition that the work product doctrine only applies before or during litigation, which – as you note – does not apply to the matter in issue. But those cases all concern the pending litigation exception in Government Code Section 6254(b), which is distinct from the attorney work product doctrine. The attorney work product doctrine is not limited to litigation-related documents but applies as well to work undertaken by an attorney in a non-litigation capacity. *County of Los Angeles, supra*, 82 C.A.4<sup>th</sup> at 833 (2000).

Accordingly, your appeal is denied.

P.J.

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<sup>1</sup> As we note, notwithstanding subsection (a)'s emphasis on preparing for trial, courts have held that the attorney work product doctrine applies generally to the work product of an attorney, even if unrelated to actual or potential litigation.

CITY AND COUNTY OF SAN FRANCISCO




DENNIS J. HERRERA  
City Attorney

OFFICE OF THE CITY ATTORNEY

PAULA JESSON  
Deputy City Attorney

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

**MEMORANDUM**

TO: Kimo Crossman  
FROM: Paula Jesson   
Deputy City Attorney  
DATE: January 7, 2008  
RE: Petition to Supervisor of Records

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On December 24, 2007, we sent you a determination of the Supervisor of Records that copies of court decisions cited in an opinion of this office are not public records subject to disclosure. We determined that (1) neither the Public Records Act nor the Sunshine Ordinance requires the City Attorney's office to produce copies (or permit inspection) of publicly available court decisions and, (2) even if this were not the case, copies of court decisions cited in the opinion are protected by the attorney work product doctrine.

You responded with the argument that the *County of Los Angeles* case that we cite is irrelevant. We cite this case for the principle that the attorney work product doctrine is not limited to litigation-related documents, but applies as well to work undertaken by an attorney in a non-litigation capacity. This principle is also addressed at some length in *Rumac, Inc. v. Bottomley*, 143 C.A.3d 810, 815 (1983).

Nevertheless, you contend that under the Sunshine Ordinance, the attorney work product doctrine does not apply to communications regarding the Public Records Act or Sunshine Ordinance. Your contention is based on Sections 67.21(i) and 67.24(b)(1)(ii) and (iii) of the Sunshine Ordinance. The former subsection provides in relevant part that "[a]ll communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records." The latter subsections provide in relevant part that, "[n]otwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure . . . (ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created [and] (iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act . . . . or this Ordinance."

Our determination on this matter remains the same, notwithstanding the provisions of the Sunshine Ordinance that you cite.

You will note that our determination is based on two distinct conclusions. If we are correct as to the first conclusion – which we believe we are – it is unnecessary to consider any privilege or exception to the public disclosure requirements. If the laws requiring disclosure do not apply, that ends the matter.

As to the second conclusion, which a court would reach only if it disagreed with our first conclusion, we remain of the opinion that copies of the court decisions that were cited in the

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CITY HALL - 1 DR. CARLTON B. SAN FRANCISCO, CALIFORNIA 94102  
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## Memorandum

TO: Kimo Crossman  
DATE: January 7, 2008  
PAGE: 2  
RE: Petition to Supervisor of Records

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opinion are protected by the attorney work product doctrine. Before beginning that analysis, we note our disagreement with statements in one of your email messages with respect to the provision in Section 67.24(b)(1)(iii) that "analysis of" communications regarding the Public Records Act and the Sunshine Ordinance are public records:

"I believe this clearly indicates that the city instructs its staff including attorneys to waive the privileged communication [which we take to mean the attorney-client privilege] and Work Product doctrines. Your office does not dispute that the privileged communications exemption is waived."

In fact, this office does not generally instruct staff to waive the work product doctrine with respect to Public Records Act and Sunshine Ordinance matters. However, it is not necessary to address this issue in this response because, with respect to your petition, the provisions of the Sunshine Ordinance that you cite are inapt.

Section 67.24(b)(1)(ii) addresses the concern that a department may improperly attempt to shield a record from disclosure merely because the record may be relevant in litigation or has been transmitted by an attorney. The records you seek, copies of court decisions, have nothing to do with client departments improperly treating a "previously received or created" record as privileged.

For either of the other two subsections to apply, one would have to construe the word "communication" to include copies of court decisions. A court decision discovered through our legal research is not a "communication[]" with the City Attorney's Office" (Section 67.21(i)). And we think a court would conclude that a judicial decision or opinion is not "advice on compliance," "analysis," "an opinion concerning liability," or a "communication" within the context of Section 67.24(b)(1)(iii).

We also disagree with your statement that this office does not dispute that the attorney-client privilege is waived as to communications regarding the Public Records Act and the Sunshine Ordinance. The Good Government Guide, issued annually by this office, addresses the scope of the attorney-client privilege in the context of the Sunshine Ordinance as follows (*Good Government Guide, An Overview of the Laws Governing the Conduct of Public Officials*, 2007-08 Edition, at page 76):

"A department may decline to disclose any attorney-client privileged communication between the department and its attorneys. State law makes communications between the City Attorney and those officials and employees privileged and confidential. Evidence Code § 950 *et seq.*

The Sunshine Ordinance requires disclosure of advice memoranda regarding the California Public Records Act, the Brown Act, the Political Reform Act, any "San Francisco governmental ethics code," or the Sunshine Ordinance. Admin. Code § 67.24(b)(1)(iii). At the same time the Charter and State law create attorney-client relationships between the City Attorney and City officials. Charter § 6.102. There may be instances where public disclosure of an attorney-client communication may conflict with the Charter and State law. Departments should refer requests for attorney-client communications to the City Attorney's Office.

**Memorandum**

TO: Kimo Crossman  
DATE: January 7, 2008  
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RE: Petition to Supervisor of Records

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The attorney-client privilege belongs to the client, not the attorney. Thus, records covered by the privilege that the City Attorney possesses must remain confidential unless the client – the City – consents to their disclosure. Bus. & Prof. Code § 6068(e).”

Finally, thank you for pointing out that I had incorrectly cited the *County of Los Angeles* case. The citation should have read *County of Los Angeles v. Superior Court*, 82 C.A.4<sup>th</sup> 819, 833 (2000).

P.J.

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA  
City Attorney

OFFICE OF THE CITY ATTORNEY

PAULA JESSON  
Deputy City Attorney

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

January 7, 2008

Laura Carroll

[REDACTED]  
San Francisco, CA 94115

Re: Petition to the Supervisor of Records

Dear Ms. Carroll:

You have asked this office, in its role as Supervisor of Records, to determine whether the Mayor's Office of Housing ("MOH") properly withheld records based on the attorney-client privilege.

By way of background, we note that you made several public records requests to the MOH in 2007, which we understand are the subject of your petition. Copies of correspondence provided to this office from MOH include several requests in 2007 and correspondence between you and MOH regarding the status of and clarifications regarding these requests. While we do not repeat the requests in full, we note that they generally relate to below market restrictions in local law adopted as part of the City's condominium conversion program, including documents relating to property that you own.

In the course of responding to your requests, MOH provided you with access to and copies of numerous records, but withheld others based on the attorney-client privilege.

You filed a complaint regarding your requests with the Sunshine Ordinance Task Force, which issued an Order of Determination on November 27, 2007. In that Order, the Task Force found MOH in violation of the Sunshine Ordinance "for failure to respond in a timely manner," ordered MOH to "produce to the Task Force and the complainant the correspondence from the City Attorney's Office specifying which documents MOH was advised to withhold from release on the basis of the attorney-client privilege," and instructed MOH "to double check to ensure that the withholding was as narrow as possible and whether redacted documents can be provided in certain circumstances."

In your petition to the Supervisor of Records, sent by email on December 18, 2007, you ask that the Supervisor of Records examine the legitimacy of MOH's withholding of records based on the attorney-client privilege. Referring to that portion of the Sunshine Ordinance Task Force Order relating to the correspondence from the City Attorney's Office specifying which documents MOH was advised to withhold, you ask that we assist you in obtaining the letter.

In further email correspondence with you on January 2, 2008, you provided this office with a copy of a letter dated December 21, 2007 to you from the Deputy Director of MOH, Douglas Shoemaker, in which he addresses some missing information in MOH's files relating to your property. Because the City Attorney's office also has a file relating to your property, MOH had asked this office to provide a duplicate set of its file to MOH. As a result, MOH was providing you with additional correspondence. Deputy Director Shoemaker also stated, however, that MOH was not providing documents that are confidential attorney-client communications.

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Letter to Laura Carroll  
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January 7, 2008

You raise three issues regarding Deputy Director Shoemaker's December 21, 2007 letter. First, you did not receive the documents that the letter said were being provided. I understand that you have now received those documents. Second, you ask that we examine the documents that the Deputy Director withheld to determine the legitimacy of the asserted attorney-client privilege. You note, in particular, that you are not involved in litigation of any kind. We have reviewed these withheld documents and this response includes our determination with respect to them. Third, you state that it would be helpful to know why MOH did not provide these documents to you until now.

We note one final issue regarding the records that we have reviewed. Ms. Ruby Harris has informed us that on November 28, 2007, you came to MOH's office to review records that you had requested. Ms. Harris noted that among those records there were five boxes of files relating to "released" units. "Released" units are units released from the below market restrictions of the condominium conversion program. MOH had previously provided you with samples of records relating to released units. When you came to MOH's office on November 28, you informed Ms. Harris that you did not then have time to review the five boxes of files with information on released units. We understand that you have not yet returned for that review. This response does not address records relating to released units from those boxes that MOH would have withheld from your review based on the attorney-client privilege. If you wish to review these additional records on released units in the future, please contact Deputy Director Shoemaker to make arrangements to do so.

We now address the issues raised in your petition.

#### Withholding of Documents Based on the Attorney-Client Privilege

In order to make a determination on the issues raised in this matter, we asked MOH to provide us with copies of the withheld records, including those that Deputy Director Shoemaker refers to in his December 21, 2007 letter. Based on our review of these records, we have determined that MOH properly withheld the vast majority of documents based on the attorney-client privilege. We did determine, however, that the following documents contain both confidential and non-confidential communications and that the confidential portions are reasonably segregable from the non-confidential portions. Therefore, redacted versions of these documents should be disclosed.

#### Email (5 pages) Regarding Goldmine Hill Condo Moderate Income Restriction Issue

This document contains several communications. Some are confidential attorney-client communications and some are not. MOH will redact the portions that are confidential attorney-client communications and disclose the remainder.

#### Email (5 pages) Regarding Condo Conversion Denial Letter

This documents contains several communications. Most are confidential attorney-client communications, but not all. MOH will disclose the portions that are not confidential attorney-client communications and disclose the remainder.

#### Memorandum (4 pages) from Jeanne Lu to Mathew O. Franklin dated December 22, 2005.

Most of the communications in this document are confidential attorney-client communications. MOH will disclose the portions that are not confidential attorney-client communications and redact the remainder.



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As noted above, MOH properly withheld the vast majority of records in response to your public records requests under the attorney-client privilege. Neither the Public Records Act nor the Sunshine Ordinance requires an agency to provide records protected by the attorney-client privilege. See California Government Code Sections 6254(k) (public agency may withhold "records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege") and 6276.04 (among the records which may be withheld under Section 6254(k) are confidential attorney-client communications); California Evidence Code Section 954 (protecting from disclosure confidential communications between attorneys and their clients); and S.F. Admin. Code §67.21(k) (release of public records shall be governed by the California Public Records Act in particulars not addressed by the Sunshine Ordinance and in accordance with the enhanced disclosure requirements provided by the Sunshine Ordinance).

You note that you are not involved in litigation regarding the matters for which you request records from MOH. The attorney-client privilege applies to confidential communications between attorneys and their clients whether or not the communication involves a litigated matter.

#### Additional Correspondence from the City Attorney's Office

As noted above, you and the Sunshine Ordinance Task Force have expressed concern that there is a letter from the City Attorney's Office to MOH regarding redactions, presumably those made under the attorney-client privilege. In your petition, you state that you understand that such a letter is required when records are redacted. Such a letter is not required. In fact, this office typically does not send such letters, although it is not unusual for deputies to confer directly with City departments in the course of their responding to public records requests in order to help them determine whether the attorney-client privilege or other privileges or exceptions apply. In this case, there is no letter or other document from the City Attorney's office relating to MOH's withholding of records in response to your request based on the attorney-client privilege.

#### Why MOH Documents Were Not Made Available Earlier

As described above, Deputy Director Shoemaker sent you a letter dated December 21, 2007, informing you that he was providing you with additional correspondence relating to your property. You stated in your message regarding these records that it would be helpful to know why they were not made available until now. We do not address this issue because of the limited role of the Supervisor of Records. When acting as Supervisor of Records, this office's role is to determine whether "the record requested, or any part of the record requested, is public." S.F. Admin. Code §67.21(d). Accordingly, we do not consider or decide this issue.

#### Final Remarks

We have informed Deputy Director Shoemaker of our determination. In light of that advice, he has agreed to provide you with a copy of the documents described above that we have determined contain both confidential and non-confidential communications. His agency will redact the protected communications from the copies that he provides to you. Please call Deputy Director Shoemaker at 701-5509 to make the arrangements to obtain these documents.

If you have any questions regarding this matter, please feel free to call.

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

Letter to Laura Carroll  
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January 7, 2008

Very truly yours,

DENNIS J. HERRERA  
City Attorney



Paula Jesson  
Deputy City Attorney

cc: Douglas Shoemaker  
Deputy Director, MOH

CITY AND COUNTY OF SAN FRANCISCO



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February 29, 2008

Laura Carroll

[REDACTED]  
San Francisco, CA 94115

Re: Petition to Supervisor of Records

Dear Ms. Carroll:

On January 7, 2008, this office sent you a response to your petition to the Supervisor of Records regarding the withholding by the Mayor's Office of Housing ("MOH") of records that you had requested, based on the attorney-client privilege. In responding to your petition, the Supervisor of Records informed you that this office was not addressing records relating to "released" units, which are units released from the below market restrictions of the City's condominium conversion program. The decision not to address those records was based on MOH staff's informing this office that MOH had provided you with samples of records relating to released units and, in addition, had also offered you the opportunity to review five boxes of files with records relating to released units, but that you had not yet reviewed those additional records. We noted that once you had conducted that review, you could file a petition with this office as to any records on released units that MOH withheld.

As to the records that MOH withheld that the Supervisor of Records reviewed, we informed you of our determination that MOH properly withheld the vast majority of documents based on the attorney-client privilege, but that several documents contained both confidential and non-confidential communications, that the confidential portions were reasonably segregable from the non-confidential portions, and that MOH had agreed to disclose redacted versions of those documents. I understand that MOH has provided the documents to you.

Our response to your petition also addressed your request for a copy of correspondence from this office to MOH regarding redactions of records covered by your requests, presumably referring to redactions that were made based on the attorney-client privilege. The Sunshine Ordinance Task Force had expressed concern that there was such a letter, but that it had not been provided to you. Our response also informed you that such a letter is not required and that this office typically does not send such letters, although it is not unusual for deputies to confer orally with City departments in order to help them determine whether a public records request calls for documents protected by the attorney-client privilege or other privileges. Our January 7, 2008 response confirmed that there was no such letter or other written communication.

You responded to the January 7, 2008 letter from the Supervisor of Records by letter dated January 15, 2008, raising several issues. We address those issues below.

1. Scope of Review and Further Response Based on the Review of Additional Documents Provided by MOH

You express concern that the Supervisor of Records did not adequately review all of the

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February 29, 2008

records that you intended to be covered by your petition. We describe your concern in detail, quoting your letter (indicated by italics) at some length:

*"[T]he January 7<sup>th</sup> response speaks only to one area of our records request, namely those related to our property. Our records requests do not 'generally relate to local law' adopted as part of the City's Condo Conversion Program; our requests involve more than what is formally in the law related to this program. [¶] Specifically, we asked your office to review all privileged documents in the areas of our records requests, which include:*

- *Current and historical policy and procedure documents from program inception related to Below Market Rate (BMR) units.*
- *Documents pertaining to any BMR that has been granted buyouts, in lieu payments or any other agreement that released them from the moderate income housing stock, released resale restrictions, or allowed owners to sell without below market rate restrictions.*
- *Documents pertaining to any BMRs that have been sold in violation of resale restrictions.*
- *Documents pertaining to current proposed changes to codes, and MOH's Condo Conversion program policies and procedures.*
- *Documents pertaining to changes in capital improvement policies from program inception to date, and documents pertaining to MOH's authority to make such changes.*
- *Documents pertaining to changes in resale policies including first right of refusal from program inception to date, and MOH's authority to make such changes.*
- *Documents pertaining to changes in deed restriction policies from program inception to date.*
- *Documents pertaining to any and all deed restriction term limits on BMRs since program inception to date."*

In connection with your concern over the scope of our review, you ask for clarification as to the records that have been reviewed and for additional review if necessary:

*"The first paragraph on page three of the letter states that MOH properly withheld the vast majority of records in response to our public records requests. It is clear records relating to our property were reviewed from proper withholding. However, it is unclear whether all of the areas of records requests above have been reviewed. If all of the areas of records requests have been reviewed, please specify this clearly in writing. If all privileged records in all areas of request have not been reviewed, we request that this review be conducted."*

Finally, you dispute the statement by MOH staff that you had declined to review five boxes of records related to released units, stating that, on the contrary, staff "made no mention of these boxes or files." Accordingly, you ask that "all records related to all released units that are attorney client privileged be reviewed for proper withholding."

In answer to the issues you have raised regarding the scope of our review, the January 7, 2008 response from the Supervisor of Records did not consider records from all of the categories that that you describe in your January 15, 2008 letter (although we note that our review was not limited to

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documents related to your property). You and MOH have divergent views regarding your requests and MOH's response. The Supervisor of Records need not attempt to resolve these differing views because MOH has agreed to provide to the Supervisor of Records all documents that it believes to be confidential attorney-client communications covered by the categories described in your January 15, 2008 letter (in "bulleted" paragraphs), through that date, that it has not already provided to the Supervisor of Records in connection with your original appeal.

As of today, MOH has provided the Supervisor of Records with all such documents, with the exception of the records described in the second and third paragraphs of your letter:

*[2] documents pertaining to any BMR that has been granted buyouts, in lieu payments or any other agreement that released them from the moderate income housing stock, released resale restrictions, or allowed owners to sell without below market rate restrictions; and*

*[3] documents pertaining to any BMRs that have been sold in violation of resale restrictions).*

Although MOH does not believe that there will be many confidential attorney-client communications among the records described in the second and third "bulleted" paragraphs, because of the large number of files that MOH will nonetheless need to review, it will take MOH additional time to undertake that review and to provide to this office any documents involving attorney-client communications that MOH believes may be properly withheld. MOH has informed us that it expects to have this additional review done in about four weeks. The Supervisor of Records will then consider whether the documents are protected by the attorney-client privilege and issue a determination.

Having reviewed the additional records that MOH has provided which, as noted above, are from all categories described in the "bulleted" descriptions of your letter except the two described above, the Supervisor of Records has determined that some of the records are not protected. As in our review of records in connection with your original appeal, we have found that the vast majority of withheld records are protected by the attorney-client privilege. But some of the records, although involving communications with attorneys, are not privileged confidential attorney-client communications, either in whole or in part.

Where the records include both privileged and non-privileged communications, the former are reasonably segregable from the latter and MOH will provide you with a copy of these records, with the confidential portions redacted. These three records are:

Email communication from D. Domer to Ruby Harris regarding "Scanned document attached 160 Garden side." This document contains several communications. All but one are confidential attorney-client communications. MOH will redact the portions that are confidential attorney-client communications and disclose the one non-confidential communication. (4 pages)

Email communication from Ruby Harris to Douglas Shoemaker and others dated 09/22/2006. This document contains several communications. MOH will redact the portions that are confidential attorney-client communications and disclose the one non-confidential communication (which is partially redacted to protect confidential attorney client communication). (4 pages)

Email communication from Lori Bamberger to Maggie Davis and others dated 12/01/2005 regarding "Goldmine Hill Condo Moderate Income Restriction Issue." This document

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contains several communications, some of which are confidential attorney-client communications. MOH will redact the portions that are confidential and disclose the non-confidential communications. (6 pages)

Three records do not include privileged communications. Two of the records were not intended to be confidential; of these, one was sent to a person who was not a City official or employee, as well as to a City employee, and the other was sent to the Clerk of the Board of Supervisors, transmitting legislation for public distribution. The third involves a clerical matter and can be disclosed without disclosing any confidential attorney-client communication. These three records are:

Fax cover sheet dated May 08, 2006 from Susan S. Cleveland-Knowles to Douglas Shoemaker and Allan Low transmitting a May 3, 2006 letter to Ms. Cleveland-Knowles from Barbara L. Gately. (6 pages).

Letter dated June 21, 1993 from Andrew W. Schwartz to John Taylor regarding "Condominium Conversion Tax; Board File No. 126-93-1; Our File No. LAO687/90," with attachments. (30 pages)

Email communication (one page) from Susan Cleveland-Knowles to Jeanne Lu and others dated 08/04/2005 regarding "Letter re 90 Sixth Street." (1 page)

2. Request to Provide Information to the Sunshine Ordinance Task Force

In our January 7, 2008 response to you, we stated that this office typically does not provide a letter to client departments when they withhold documents based on the attorney-client privilege. In light of this comment, you request "that the Sunshine Ordinance Task Force (SOTF) be made aware of this, so they do not make requests of parties involved in complaints that they are not required to produce." We are providing a copy of your letter and this response to the Sunshine Ordinance Task Force.

3. Section 67.21(c) Statement

You make the following request with reference to documents withheld based on the attorney-client privilege:

*"I also request that while such type of correspondence may not be required of your office, my understanding is that MOH is required to produce information on withheld documents in accordance with Sunshine Ordinance section 67.21c: '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.' I have asked MOH twice for this response in relation to withheld released unit records and proposed changes to policy and procedure documents, and have not received a response to date. If it is within the scope of the duty of Supervisor of Records, I ask for your assistance in getting MOH to comply with this section of the Sunshine Ordinance."*

As noted in our January 7, 2008 response to your appeal, when acting as Supervisor of Records, this office's role is to determine whether "the record requested, or any part of the record requested, is public." S.F. Admin. Code §67.21(d). Because of the limited role of the Supervisor of Records under this provision, we do not consider or decide this issue.

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4. Communications with the City Attorney's Office regarding Sunshine Requests

You request *"that all records, paper or electronic, that involve your office communicating with anyone at MOH regarding whether attorney client privilege or other privileges apply to our Sunshine requests and involve advise on the Sunshine Ordinance be reviewed for proper withholding."*

We understand from MOH that in response to action taken by the Sunshine Ordinance Task Force, it is publicly disclosing all documents with this office regarding Sunshine requests. We understand from MOH that it has provided you with Sunshine-related documents between MOH and this office by letter dated January 2, 2008 and that it has located the remainder of the documents between this office and MOH regarding Sunshine requests, which MOH will also send to you. Since MOH is making these documents public, the Supervisor of Records had no reason to review them.

5. Neutral Review of the Petition to the Supervisor of Records

You request confirmation of a neutral review of your petition, stating as follow:

*"Lastly, I requested a neutral party in your office review all MOH privileged documents to ensure withholding of public records has been as narrow as possible, and that the neutral party assigned to this not be the attorney or any staff that MOH has worked with regarding proposed MOH policy and procedure changes. Please confirm that this neutral assignment did indeed occur. For my records, if you can provide me with the name of the reviewer, I would like this information as well."*

I was the person assigned by this office to review your petition. I have not worked with MOH regarding proposed MOH policy and procedure changes.

Concluding Remarks

As discussed above, there remains an additional set of records from MOH that the Supervisor of Records will review in response to your January 15, 2008 letter. These records are from the second and third "bulleted" paragraphs of your letter. I am informed by MOH that they expect to furnish these records to this office within the next four weeks. The Supervisor of Records will then consider whether the documents are protected by the attorney-client privilege and issue a determination.

Very truly yours,

DENNIS J. HERRERA  
City Attorney



Paula Jesson  
Deputy City Attorney

cc: Douglas Shoemaker  
Deputy Director, MOH

CITY AND COUNTY OF SAN FRANCISCO



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April 21, 2008

Laura Carroll

San Francisco, CA 94115

Re: Petition to Supervisor of Records

Dear Ms. Carroll:

The Supervisor of Records has reviewed the final group of records from the list of the categories set forth in the bulleted paragraphs of your January 15, 2008 letter (which responded to the January 7, 2008 response by the Supervisor of Records to your initial petition).

Again, we found that MOH properly withheld the vast majority of records based on the attorney-client privilege. However, two records – although they involved communications with a deputy city attorney – were also sent to parties who were not City employees. The transmission to parties outside the City shows no intent to communicate confidentially with a client, making the attorney-client privilege inapplicable. These two communications are:

August 7, 1996 letter to Deputy City Attorney John Malamut from MOH (one page – although the letter refers to attachments, MOH has informed me that MOH has been unable to locate the attachments in their files)

May 19, 1992 Fax to David Hood, Joe LaTorre and David Cincotta from Deputy City Attorney Leslie Braverman, with attachments (total of 10 pages)

In addition, MOH has a complaint from a court action entitled *Ernesto Estenez v. First American Title Insurance Company*, Superior Court No. CGC-07-469460.

There remains a final issue. Although MOH has now provided the Supervisor of Records with all records withheld under the attorney-client privilege covered by your requests (including the categories described in your January 15, 2008 letter), MOH has agreed to review all of its remaining records relating to the City's Condo Conversion Program. If they believe that any of those records are subject to the attorney-client privilege, MOH will then provide those records to the Supervisor of Records for review.

Very truly yours,

DENNIS J. HERRERA  
City Attorney

*Paula Jesson*  
Paula Jesson  
Deputy City Attorney

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CITY AND COUNTY OF SAN FRANCISCO



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June 10, 2008

Laura Carroll

San Francisco, CA 94115

Re: Petition to Supervisor of Records

Dear Ms. Carroll:

Pursuant to an appeal that you initially sent to this office on December 18, 2007 and that you supplemented through further correspondence, the Supervisor of Records has over a period of months reviewed records as MOH provided them to this office to determine whether MOH properly withheld the records under the attorney-client privilege. The Supervisor of Records has provided you with determinations in several different letters, sent as the Supervisor of Records reviewed the records.

MOH has now provided, and the Supervisor of Records has reviewed, the final group of records relating to the City's Condo Conversion Program and has determined that all were properly withheld under the attorney-client privilege.

With this last determination, the Supervisor of Records considers your appeal resolved.

Very truly yours,

DENNIS J. HERRERA  
City Attorney

A handwritten signature in cursive script that reads "Paula Jesson".

Paula Jesson  
Deputy City Attorney

Paula Jesson/CTYATT  
05/23/2008 11:24 AM

To "Laura Carroll" [REDACTED]  
cc Douglas Shoemaker/OCDHH/MAYOR/SFGOV@SFGOV,  
Ruby Harris/OCDHH/MAYOR/SFGOV@SFGOV  
bcc Susan Cleveland-Knowles/CTYATT@CTYATT  
Subject Re: request re last item [REDACTED]

Dear Ms. Carroll,

You asked the following questions regarding the records withheld by MOH based on the attorney-client privilege:

- (1) Can I be told how many total pages they are withholding?
- (2) In emails that they have deemed privileged and you agree, can I obtain at least the header information on those records?
- (3) If not an email can I receive the same info on hard copy records?

As you know, my responses to you are in my role as Supervisor of Records, which is limited to making determinations on actions of City departments when declining to produce records in response to public records requests.

(1) As to the first question, you should request this information from MOH (although this is not to say that MOH is legally required to provide this information). The Supervisor of Records has not to date addressed this issue.

(2) The Supervisor of Records has addressed the issue raised in your second question. In that instance, the department withheld records based on the attorney-client privilege and the requester asked the department for information in the "Date/From/To" fields. The department declined to disclose that information, relying on a California Supreme Court decision, *Haynie v. Superior Court* (2001) 26 Cal.4th 1061.

In *Haynie*, the California Supreme Court held that a public agency is required to provide the basis for withholding records but is not required "to go further and describe each of the documents falling within the statutory exception." *Haynie, supra*, at 1074.

In the matter referred to the Supervisor of Records, the responding department argued that providing the redacted records showing only the "Date/From/To" fields would be tantamount to providing, in another format, a description of each record, an action which *Haynie* held is not legally required. On appeal, the Supervisor of Records determined that the department's decision was correct and denied the appeal.

(3) If the answer to the second question is no, you further ask whether you can receive the header information on hard copy records. The determination of the Supervisor of Records described above assumed that the information requested would have been provided in hard copy.

Paula Jesson  
Deputy City Attorney  
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kimo@webnetc.net

To "Mariam Morley" <Mariam.Morley@sfgov.org>

cc "Paula Jesson" <Paula.Jesson@sfgov.org>, "Allen Grossman" <grossman@redacted>, "Matt Dorsey" <Matt.Dorsey@sfgov.org>, Cityattomey

bcc

Subject Re: Appeal to the Supervisor of Records ? District Attorney Calendars for 12/18/07 ? 1/31/08

Ms.Morley

Can you tell me how long it takes to provide calendar records which a department head is required to keep under Sunshine? Especially since the request was for rolling incremental delivery per sunshine.

I request a ruling on whether these records are public - the department has already failed to comply even after the invalid extension since these records are easily accessible..

→ On Jan 18, 2008 2:40 PM, Mariam Morley <Mariam.Morley@sfgov.org> wrote:

Dear Mr. Crossman:

I am writing in response to your recent petition to the Supervisor of Records in which you reference your December 18, 2007 request for copies of the District Attorney's calendars for the period December 18, 2007 through January 31, 2008. The material attached to your petition indicates that Mr. Henderson from the District Attorney's Office contacted you on December 19, 2007 to inform you that he was in the process of identifying and locating the records you sought. Your petition does not indicate whether the Office of the District Attorney ever provided a substantive response to your request.

We contacted the Office of the District Attorney. Staff at that Office informed us that they had inadvertently failed to respond to your December 18, 2007 request. They assured us that they would provide you with a response early next week.

Should such a response not be forthcoming, please feel free to contact me.

Mariam M. Morley  
Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
San Francisco, CA 94102  
Tel: 415-554-4633  
Fax: 415-554-4747

**Mariam Morley/CTYATT**  
01/23/2008 02:02 PM

To kimo@webnetic.net  
cc  
bcc  
Subject Response to your email of 1/18/08 with the following  
"subject" line: Appeal to the Supervisor of Records ? District  
Attorney Calendars for 12/18/07 ? 1/31/08

Dear Mr. Crossman:

I believe that your email asks whether calendars of specified public officials maintained pursuant to San Francisco Administrative Code Section 67.29-5 are public records. Section 67.29-5 states as follows: "[s]uch calendars shall be public records . . . ."

**Mariam M. Morley**  
Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
San Francisco, CA 94102  
Tel: 415-554-4633  
Fax: 415-554-4747



Paula Jesson/CTYATT  
01/10/2008 05:29 PM

To kimo@webnetic.net  
cc Mariam Morley/CTYATT@CTYATT  
bcc  
Subject Re: APPEAL: Immediate Disclosure Request - Oil Spill  
Communications - Gavin Newsom

Dear Mr. Crossman,

You submitted five petitions on January 3, 2008. Four of those relate to requests for records made to this office. This office has not yet responded to this request. As you know, because of the volume of your public records requests to this office, it has become necessary to prioritize them. When this office has completed its review and determined that a record that you have requested falls within a protected category and should be withheld, you may appeal the denial to the Supervisor of Records. Until that time, your appeal is premature.

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>



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

01/10/2008 05:19 PM

Please respond to  
kimo@webnetic.net

To "Paula Jesson" <Paula.Jesson@sfgov.org>  
cc "Mariam Morley" <Mariam.Morley@sfgov.org>, "ahimsa  
sumchai" [redacted],  
cityattorney@sfgov.org, "frandacosta" [redacted]  
<frandacosta [redacted]>, "Allen Grossman"  
[redacted], "home@prosf.org"  
<home@prosf.org>, "Islands Wharf" [redacted]  
Subject Re: APPEAL: Immediate Disclosure Request - Oil Spill  
Communications - Gavin Newsom

Thanks, actually, I would prefer that you work on this. I will wait until you return.

What is that status of the appeals I submitted on the 3rd?

thank you

On Jan 10, 2008 5:17 PM, Paula Jesson <Paula.Jesson@sfgov.org> wrote:

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY



DENNIS J. HERRERA  
City Attorney

PAULA JESSON  
Deputy City Attorney

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

MEMORANDUM

TO: Kimo Crossman  
FROM: Paula Jesson  
Deputy City Attorney  
DATE: April 16, 2008  
RE: Petition to Supervisor of Records

On November 30, 2007, you requested that the City Attorney's Office provide "all materials related to the Buck Delventhal meeting on 10/9 re Board of Sups Sunshine Task Force hearing re Sup Peskin and Maxwell' 1.75 hours. And any materials or communications before or after this meeting relating to the matters discussed."

On February 14, 2008, Ms. Alexis Thompson of the City Attorney's Office responded to your request, informing you that the meeting referred to in your request was an e-mail exchange among several Deputy City Attorneys, that the e-mails that constituted that exchange are attorney work product, which the law protects from disclosure under California Government Code Section 6254(k) and California Code of Civil Procedure Section 2018.030, and that the City Attorney's Office therefore declined to disclose those records.

In the same February 14, 2008 response, Ms. Thompson informed you that the office had located e-mail inquiries from clients that had instigated the 10/9 e-mail discussion and was providing you with those communications. One page of the e-mail messages sent to you had two parts of a page redacted.

In a March 27, 2008 Order of Determination, the Sunshine Ordinance Task Force found that the City Attorney's Office violated the Sunshine Ordinance by "improperly redacting attorney-client privilege and work-product from the e-mails produced."

You filed your petition on April 9, 2008, stating that you were filing an appeal to the Supervisor of Records "[n]ow that the SOTF has ruled on this matter in my favor . . . ." You asked that the Supervisor of Records "justify any further withholdings taking into account the independent authority of SOTF to adjudicate these matters."

We understand your petition to seek a review by the Supervisor of Records of the actions that are the subject of the March 27, 2008 Sunshine Ordinance Task Force Order of Determination. The Order of Determination states in relevant part:

The Task Force finds that the [City Attorney's Office] violated §§ 67.21(i) and 67.24(b)(1)(iii) of the Sunshine Ordinance for improperly redacting attorney-client privilege and work-product from the e-mails produced. The agency shall release the records requested without redactions . . . ."

CITY HALL - 1 DR. CARLTON B - SAN FRANCISCO, CALIFORNIA 94102  
RECEPTION: (415) 554-4700 FACSIMILE: (415) 554-4747

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## Memorandum

TO: Kimo Crossman  
DATE: April 16, 2008  
PAGE: 2  
RE: Petition to Supervisor of Records

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As the quoted portions from the Order shows, the Task Force issued its order based on the understanding that the City Attorney's Office redacted portions of the e-mails produced based on the attorney-client privilege and the attorney work product doctrine and, in addition, that the redacted material involved the advice of this office on Sunshine matters. In fact, the Task Force misunderstood the facts.

When this office transmitted the e-mails to you in response to your public records request, Ms. Thompson noted as follows:

"We have located those communications and they are attached in redacted form. The redacted material consists of communications about matters that were not the subject of the October 9<sup>th</sup> email discussion, are unrelated to public records, public meetings or ethics issues, and are protected from disclosure by the attorney-client privilege."  
[Emphasis added.]

The Order of Determination is thus based on an incorrect understanding of the facts. This office redacted the e-mails based solely on the attorney-client privilege. Moreover, the redacted material was unrelated to public records, public meetings or ethics issues. The provisions of the Sunshine Ordinance that the Task Force relied on in issuing its Order of Determination do not apply to the e-mails in question because the matter redacted does not involve public records, public meetings or ethics issues.

For these reasons, the Supervisor of Records finds that the City Attorney's Office properly redacted the records provided to you and denies your petition.

P.J.

cc: Sunshine Ordinance Task Force



Paula Jesson/CTYATT

04/28/2008 05:11 PM

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

cc "Ernest Llorente" <Ernest.Llorente@sfgov.org>, "Frank Darby" <Frank.Darby@sfgov.org>, "Allen Grossman"

bcc [REDACTED], "Christian Holmer"

Subject RE: Petition to Supervisor of Records

Dear Mr. Crossman,

Your petition asked for a review based on the SOTF's reasoning set forth in its Order of Determination. You now ask for a review of the records that were withheld based on the attorney work product doctrine. While the SOTF Order referred to the attorney work product doctrine, it provided no analysis of that issue, and it expressly concerned only "redactions." The "redactions" in issue were made under the attorney client privilege. Nevertheless, the Supervisor of Records has reviewed the withheld records and finds that they are attorney work product. As you know, the Supervisor of Records has determined that documents may be withheld under the attorney work product doctrine.

Accordingly, we remain of the opinion that your petition should be denied.

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>



"Kimo Crossman"

<kimo@webnetic.net>

04/24/2008 04:23 PM

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

cc "Ernest Llorente" <Ernest.Llorente@sfgov.org>, "Frank Darby" <Frank.Darby@sfgov.org>, "Allen Grossman"

[REDACTED], "Christian Holmer" <mail@csrsf.com>

Subject RE: Petition to Supervisor of Records

Please reread your determination – I believe it pertained to the redactions on some records, not the completely withheld communications which were not provided at all.

From: Paula Jesson [mailto:Paula.Jesson@sfgov.org]  
Sent: Thursday, April 24, 2008 3:55 PM  
To: kimo@webnetic.net  
Cc: 'Ernest Llorente'; 'Frank Darby'; 'Allen Grossman'; 'Christian Holmer'  
Subject: RE: Petition to Supervisor of Records





Alexis Thompson /CTYATT  
02/28/2008 02:19 PM

To kimo@webnetic.net  
cc  
bcc  
Subject Re: Harrison Sheppard Materials Records Request

Good Afternoon Kimo,

This email responds to your public records request for "all materials and correspondence with or about or provided to Harrison Sheppard the new SOTF member." You have also requested "the attorney billing records/timesheets for anyone in your office who [has met] with him." Finally, you have requested "the calendars of anyone in [this] office who has interacted with him in any manner whether or not the calendar shows evidence of this meeting or not."

With respect to this first request, we have located several responsive records, which are attached.

With respect to your second request and third requests, we have enclosed all billing records and calendar entries that pertain to interactions with Mr. Sheppard. Please note that the billing records are overinclusive, in the sense that they are not limited to time spent in interactions with Mr. Sheppard. We understand that you have previously received billing records of Mr. Llorente's that would include any interactions with Mr. Sheppard.



SHEPPARD.pdf

Best,  
ALEXIS THOMPSON  
Deputy Press Secretary

---

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Alexis Thompson /CTYATT  
02/25/2008 05:34 PM

To kimo@webnetic.net

cc

bcc

Subject Re: Request for "all communications and advice provided to Angela Calvillo"

Dear Kimo,

This email responds to your public records request for "all communications and advice provided to Angela Calvillo, Clerk of the Board, regarding matters related to Open Government, public records, Sunshine Task Force or privacy as described in Govt. Code 67.24(b)(1)(III) & 67.21(f)." In addition, you have requested "detailed attorney billing records related to this advice." Finally, you request "detailed calendars for all attorneys who have advised Ms. Calvillo on these matters whether or not the calendar shows the meeting and whether or not attorney billing records were created as part of the advice."

With respect to your first request, we have located and are attaching several records that are responsive. Please note that as a courtesy we are including one record that was created after the date of your request.

With respect to your second request, we do not have "detailed attorney billing records related to this advice." There are only general billing records that may relate to the advice. Though these records may not be responsive to your request because of their general nature, we are enclosing these records, which, in the case of one Deputy City Attorney, cover (1) general Sunshine entries and (2) Sunshine entries for the Board of Supervisors, for the days that parallel the several communications referred to above. These billing entries may include time spent advising Ms. Calvillo on Sunshine matters; but please note that the two categories of billing records are not limited to advice provided to Ms. Calvillo. Thus, we cannot say for sure that in all cases the billing records include time spent advising Ms. Calvillo on Sunshine matters, or that they exclusively refer to time spent advising Ms. Calvillo.

With respect to your third request for "detailed attorney calendars," the calendar entries pertaining to this advice are rather general. Nevertheless, we are enclosing calendar entries (whether or not expressly designated as such) covering meetings with Ms. Calvillo involving Sunshine advice.



CALV\_01.pdf

Best,  
ALEXIS THOMPSON  
Deputy Press Secretary

---

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— Forwarded by Alexis Thompson/CTYATT on 03/06/2008 04:33 PM —



"Kimo Crossman"  
<kimo@webnetic.net>

03/06/2008 04:04 PM

Please respond to  
<kimo@webnetic.net>

To "Alexis Thompson" <Alexis.Thompson@sfgov.org>

cc "Allen Grossman" [REDACTED]

Subject RE: Request from 1/03/08 re: Communications w/ District Attorney

While I disagree and will respond further, under 67.21 C please describe the communications including quantity within seven days

→ **From:** Alexis Thompson [mailto:Alexis.Thompson@sfgov.org]  
**Sent:** Thursday, March 06, 2008 9:21 AM  
**To:** kimo@webnetic.net  
**Subject:** re: Request from 1/03/08 re: Communications w/ District Attorney

Dear Mr. Crossman,

You have asked for "all communications and advice for the period of May 2007- Present with the San Francisco District Attorney's office regarding matters related to Open Government, public records, Sunshine Taskforce or privacy as described in [specified sections of the Sunshine Ordinance]."

Under Charter Section 6.102, the City Attorney is the attorney for the City and County of San Francisco, including the San Francisco District Attorney and other elected City and County officials. The District Attorney's Office has written to this office, stating that it is the holder of the attorney-client privilege in this instance and informing us that it does not waive the privilege with respect to the records that you have requested. The District Attorney has expressly directed this office not to publish any communications between this office and the District Attorney's Office. See the attached letter from Paul Henderson, Chief of Administration to Dennis Herrera, dated February 25, 2008.

Assistant District Attorney Henderson cites two statutes in his letter, California Evidence Code section 950 *et seq.* (the client has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer) and California Business and Professions Code section 6068(e)(1) ("[i]t is the duty of an attorney . . . [t]o maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client").

We also note that lawyers have an ethical obligation under the California Rules of Professional Conduct not to reveal information protected from disclosure under Business and Professions Code section 6068(e)(1) without the informed consent of the client (unless the lawyer reasonably believes that

disclosure of the communication relates to the prevention of a criminal act that is likely to result in the death of, or substantial bodily harm to, an individual). Rules of Professional Conduct, Rule 3-100. See also, California Government Code section 6276.04 (among the records not required to be disclosed under the Public Records Act are attorney-client confidential communications protected under Business and Professions Code section 6068 and Evidence Code Sections prohibiting the disclosure of confidential attorney-client communications).

Section 67.24(b)(1)(iii) of the Sunshine Ordinance provides that "[a]dvice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act . . . or this Ordinance" are subject to disclosure. Although the practice of this office is to alert City clients seeking written legal advice to this provision of the Sunshine Ordinance, we have also noted that there may be instances where the disclosure of attorney-client communications may conflict with the Charter and State law. See the Good Government Guide, 2007-08 edition (the first discussion is on pages 15-16 and the second on page 76):

#### **The City Attorney's Role in Providing Ethics and Open Government Advice**

\*\*\*

Finally, City officers and employees should be aware that legal advice on ethics laws and open government laws may not be confidential for another reason. The Sunshine Ordinance provides that notwithstanding any exemption provided by law, any written legal advice about conflicts or open government laws may not be withheld from disclosure in response to a request for records under the Sunshine Ordinance. Accordingly, the practice of the City Attorney's Office is to make clear to any officer or employee who requests such advice in writing that the advice may be subject to disclosure upon request by a member of the public.

\*\*\*

#### **Attorney-Client Communication**

A department may decline to disclose any attorney-client privileged communication between the department and its attorneys. State law makes communications between the City Attorney and those officials and employees privileged and confidential. Evidence Code § 950 *et seq.*

The Sunshine Ordinance requires disclosure of advice memoranda regarding the California Public Records Act, the Brown Act, the Political Reform Act, any "San Francisco governmental ethics code," or the Sunshine Ordinance. Admin. Code § 67.24(b)(1)(iii). At the same time the Charter and State law create attorney-client relationships between the City Attorney and City officials. Charter § 6.102. There may be instances where public disclosure of an attorney-client communication may conflict with the Charter and State law. Departments should refer requests for attorney-client communications to the City Attorney's Office.

The attorney-client privilege belongs to the client, not the attorney. Thus, records covered by the privilege that the City Attorney possesses must remain confidential unless the client – the City – consents to their disclosure. Bus. & Prof. Code § 6068(e).

In light of the legal uncertainty of the validity of Section 67.24(b)(1)(iii), the otherwise privileged nature

of the attorney-client communications in question, and the direction by the District Attorney's office not to disclose these communications, this office has both a legal and ethical duty to assert the privilege in response to your request. For these reasons, we decline to provide the records that you have requested.

Best,  
ALEXIS THOMPSON  
Deputy Press Secretary

---

OFFICE OF CITY ATTORNEY DENNIS HERRERA  
San Francisco City Hall, Room 234  
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CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA  
City Attorney

OFFICE OF THE CITY ATTORNEY

PAULA JESSON  
Deputy City Attorney

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

MEMORANDUM

TO: Kim Crossman  
FROM: Paula Jesson  
Deputy City Attorney  
DATE: March 24, 2008  
RE: Petition to Supervisor of Records

On March 11, 2008, you sent an email request to the Supervisor of Records for a determination on the withholding of records by this office of "all communications and advice for the period of May 2007 - Present with the San Francisco District Attorney's office regarding matters related to Open Government, public records, Sunshine Taskforce or privacy . . . ."

In response to your public records request for the aforementioned records, Alexis Thompson of the City Attorney's Public Information Office informed you by email on March 6, 2008 that the District Attorney's Office had written to the City Attorney's Office, stating that it is the holder of the attorney-client privilege with respect to the requested communications and that it is not waiving the privilege for the requested records, and directing the City Attorney's Office not to publish the communications. Ms. Thompson's message set forth various state laws requiring attorneys to maintain the confidentiality of communications protected by the privilege, and referred you to portions of the Good Government Guide discussing Section 67.24(b)(1)(iii) of the Sunshine Ordinance in light of these state laws. Section 67.24(b)(1)(iii) provides that records of "[a]dvice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act . . . or this Ordinance") are subject to disclosure.

Having reviewed the March 6, 2008 e-mail from Ms. Thompson, the Supervisor of Records has determined that the analysis set forth in that communication is correct.

In your email to Ms. Thompson dated March 6, 2008, you cite Section 67.36 of the Sunshine Ordinance, which states that the Ordinance "supersedes other local laws," and you note that the Charter is local law too. However, an ordinance cannot trump the Charter, which is the supreme local law. *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4<sup>th</sup> 161, 170 ("We begin with the cardinal principle that the charter represents the supreme law of the City, subject only to conflicting provisions in the federal and state Constitutions and to preemptive state law. (See *Harman v. City and County of San Francisco* (1972) 7 Cal.3d 150, 161.); *Currier v. City of Roseville* (1970) 4 Cal.App.3d 997, 1001 ("The proposition is self-evident . . . that an ordinance must conform to, be subordinate to, not conflict with, and not exceed the [city's] charter, and can no more change or limit the effect of the charter than a legislative act can modify or supersede a provision of the constitution of the state. [Citations omitted.]").

As noted in Ms. Thompson's e-mail denying your public records request, the District Attorney was relying on the attorney-client privilege, which is provided under state law and is

CITY HALL • 1 DR. CARLTON B • SAN FRANCISCO, CALIFORNIA 94102  
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**Memorandum  
Privileged & Confidential**

**TO:** Kimo Crossman  
**DATE:** March 24, 2008  
**PAGE:** 2  
**RE:** Petition to Supervisor of Records

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imported into Section 6.102 of the Charter, which establishes the attorney-client relationship between this office and the District Attorney's Office.

Your petition also asks that this office retain outside counsel "since you would be in conflict ruling on the matter that is in your office." As you know, since the adoption of the Sunshine Ordinance creating the function of the Supervisor of Records, the deputies in this office assigned to serve as the Supervisor of Records have issued determinations with respect to public records requests made to this office as well as to those made to other City departments. The Sunshine Ordinance directs the City Attorney's Office to make these determinations. It provides no exception for petitioners who appeal a determination by this office to withhold records. This office therefore declines to retain outside counsel to perform this function.

For the reasons set forth above, the Supervisor of Records denies your petition.

P.J.



Paula Jesson/CTYATT  
03/25/2008 12:36 PM

To kimo@webnetic.net  
cc "Doug Comstock" [redacted], "Erica Craven" <elc@lrolaw.com>, "Allen Grossman" [redacted], "home@prosf.org"  
bcc [redacted]  
Subject Re: NO Access To DA Sunshine Communications re Supervisor of Records

Dear Mr. Crossman,

The Supervisor of Records has reviewed the points you raise and our determination remains the same.

To clarify one issue that you raise, the communications with the District Attorney are public records. The issue is whether the law provides a basis for withholding. The Supervisor of Records, for the reasons stated in the response to your petition, has concluded that the records may be lawfully withheld.

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>



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

03/25/2008 08:22 AM

Please respond to  
kimo@webnetic.net

To "Paula Jesson" <Paula.Jesson@sfgov.org>, "Allen Grossman" [redacted], "home@prosf.org" <home@prosf.org>, "Doug Comstock" [redacted], "Erica Craven" <elc@lrolaw.com>, SOTF <sotf@sfgov.org>, "Bruce Wolfe" [redacted], "Richard Knee" [redacted]  
cc [redacted]  
Subject NO Access To DA Sunshine Communications re Supervisor of Records

Ms. Jesson

You can't be serious?

The DA, like every city/county agency is required under SO to waive the Attorney Client Privilege on Open Government Communications. Your office concedes this for it's own relevant communications and has required it of other city departments. How is the DA different?

As Supervisor of Records are you saying these Sunshine Communications the DA has had with



your office are not Public Records? It is your duty to answer this question with a simple Yes or No. If Yes, the DA has five days to turn over the documents before you are required to refer the matter out for enforcement. In this case since the records are in your custody and control - you also are required to produce them.. Also if the DA is violating the law who should I inform? Attorney General? California Law?

Needless to say this will be a discussion topic for today's SOTF meeting

Thank you

On Mon, Mar 24, 2008 at 12:26 PM, Paula Jesson <[Paula.Jesson@sfgov.org](mailto:Paula.Jesson@sfgov.org)> wrote:

Dear Mr. Crossman,

Here is the response to your petition to the Supervisor of Records sent by e-mail on 03/11/2008 08:52 PM regarding DA communications on Sunshine Matters.

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](mailto:paula.jesson@sfgov.org)



kcdapriv.pdf

Paula Jesson/CTYATT  
04/24/2008 03:50 PM

To "Kimo Crossman" <kimo@webnetic.net>@SFGOV  
cc Frank Darby/BOS/SFGOV@SFGOV  
bcc  
Subject Re: Petition to Supervisor of Records - Communications with  
the District Attorney's Office

Dear Mr. Crossman,

Although the Supervisor of Records has issued a determination on your appeal, you have renewed your petition "[n]ow that SOTF has ruled on this matter in my favor and provided their reasoning . . . ."

The Supervisor of Records has reviewed the analysis set forth in the SOTF Order of Determination. Notwithstanding that analysis, the Supervisor of Records respectfully remains of the opinion that the City Attorney's Office properly withheld the communications that were the subject of your request. Although the Task Force asserts that the provisions of the Sunshine Ordinance prevail over state laws requiring attorneys to maintain the confidentiality of client communications, there is no persuasive legal basis for that proposition. The decision cited by the SOTF, *Rivero v. Superior Court* (1997) 54 C.A.4th 1048, neither considers nor decides whether the Sunshine Ordinance prevails over the State laws governing the attorney-client privilege. The Supervisor of Records finds no grounds for changing its view that the City Attorney's Office properly concluded that it was legally and ethically bound under these circumstances to assert the attorney-client privilege.

Accordingly, the Supervisor of Records remains of the opinion that your petition should be denied.

Paula Jesson  
Deputy City Attorney  
City and County of San Francisco  
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1 Dr. Carlton B. Goodlett Place  
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email: paula.jesson@sfgov.org  
"Kimo Crossman" <kimo@webnetic.net>



"Kimo Crossman"  
<kimo@webnetic.net>  
04/09/2008 09:38 AM

To "Paula Jesson" <Paula.Jesson@sfgov.org>  
cc  
Subject APPEAL CAO Response to OD: Complaint #08004, 08005 &  
08007\_Crossman vs CAO

Now that SOTF has ruled on this matter in my favor and provided their reasoning as you have requested, this is an appeal to the Supervisor of records for the withheld documents - please justify any further withholdings taking into account the independent authority of SOTF to adjudicate these matters.

-----Original Message-----

From: SOTF [mailto:sotf@sfgov.org]  
Sent: Wednesday, April 09, 2008 8:49 AM



Paula Jesson/CTYATT  
04/28/2008 05:09 PM

To "Kimo Crossman" <kimo@webnetc.net>@SFGOV  
cc "Alexis Thompson" <Alexis.Thompson@sfgov.org>, cityattorney@sfgov.org, "Allen Grossman"  
bcc [REDACTED], home@prof.org,

Subject Re: APPEAL: Communications w/ District Attorney, redacted emails required.

Dear Mr. Crossman,

You have filed a petition seeking review of the nondisclosure by this office of that portion of communications and advice with the District Attorney's Office regarding Sunshine matters insofar as those communications show the "date" and "to" and "from" fields. The City Attorney's Office declined to provide the communications so redacted, citing *Haynie v. Superior Court* (2001) 28 Cal.4th 1061. Your petition argues that federal agencies are required under FOIA to provide large numbers of highly redacted documents and that therefore the same requirements should apply to City departments because the Public Records Act is based on FOIA.

The Supervisor of Records has determined that the City Attorney's Office properly declined to provide the records with the redactions that you requested. The Supervisor of Records finds it unnecessary to consider FOIA in response to your petition because the California Supreme Court has construed the requirements of the Public Records Act under facts sufficiently similar to those in issue to provide clear guidance. Moreover, the Supervisor of Records finds nothing in the Sunshine Ordinance that requires a different result.

Accordingly, your petition is denied.

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@webnetc.net>



"Kimo Crossman"  
<kimo@webnetc.net>  
04/21/2008 07:14 PM

To "Alexis Thompson" <Alexis.Thompson@sfgov.org>, "Matt Dorsey" <Matt.Dorsey@sfgov.org>, <cityattorney@sfgov.org>, "Paula Jesson" <Paula.Jesson@sfgov.org>  
cc <home@prof.org>, "Allen Grossman" <[REDACTED]>, "Alexis Whelan" <[REDACTED]>, "Stephen Wills" <st.voter\_empowerment\_project@yahoo.com>, <Pmonette-shaw@[REDACTED]>  
Subject APPEAL: Communications w/ District Attorney, redacted emails required.

**Mariam Morley/CTYATT**  
01/23/2008 01:57 PM

To kimo@webnetic.net  
cc  
bcc  
Subject Petition to the Supervisor of Records

Dear Mr. Crossman:

I am writing in response to your January 10, 2008 petition to the Supervisor of Records regarding the response of the Mayor's Office to your request for text messages appearing on the privately-owned mobile telephone of a public employee. The Mayor's Office refused to provide such messages on the grounds that: 1) the City has no ownership or possessory interest in telephones owned by public employees, and the City does not require its employees to purchase such telephones; 2) the City has no right to require a public employee to allow a member of the public to inspect the employee's private property in order to comply with a request for records; and 3) personal cellphone texting programs contain private information and communications that typically cannot be segregated. Considering all of these factors, we conclude that the text messages do not constitute public records within the meaning of the Sunshine Ordinance or the California Public Records Act. Accordingly, we agree that the Mayor's Office was not required to disclose the text messages requested.

Mariam M. Morley  
Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
San Francisco, CA 94102  
Tel: 415-554-4633  
Fax: 415-554-4747



DENNIS J. HERRERA  
City Attorney

PAULA JESSON  
Deputy City Attorney

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

**MEMORANDUM**

TO: Thomas Peele  
Reporter, The Chauncy Bailey Project  
Oakland Tribune

FROM: Paula Jesson  
Deputy City Attorney

DATE: February 8, 2008

RE: Petition to the Supervisor of Records

---

On January 29, 2008, you appealed to this office, as Supervisor of Records, the withholding of records by the San Francisco Adult Probation Department.

You and fellow reporter Bob Butler made the request for records to Chief Deputy Adult Probation Officer Patrick J. Boyd, asking for "[t]he sign in sheets for room 200 of the City and County of San Francisco Adult Probation Department between July 30, 2007 and Aug. 10, 2007."<sup>1</sup>

Chief Deputy Boyd declined to disclose the sign-in sheets, which he described as "the sheets that probationers sign when they come to the Adult Probation Department to meet with their assigned probation officer." Chief Deputy Boyd explained the basis for withholding requested records as follows:

"We decline to disclose those sheets due to the fact that they represent a portion of those records maintained regarding a probationer's conduct during the term of probation and thus 'constitute a part of the records of the court.' (California Penal Code section 1203.10)

In *McGuire v. Superior Court*, 12 Cal.App.4<sup>th</sup> 1685 (1993), the Court explained that California Penal Code section 1203.10 allows inspection of probation officer records only by persons listed in that section or otherwise designated by the court. Members of the public and requestors of public records are not listed as persons authorized to inspect probation records.

Accordingly, in the absence of a court order, the Adult Probation Department is not authorized to release the records you seek. For this reason, we decline to produce the records you have requested. (California Government Code sections 6255, 6276 et seq.)."

---

<sup>1</sup> The dates of the request and the response are not entirely clear from your petition, which you sent by email. The email shows January 16, 2008 as the date of the "original request" for the sign-in sheets. The email also includes the response from Chief Deputy Boyd, in which he states that he received the email requesting these records on January 21, 2008. In any event, the dates of the request and response are not relevant to this determination.

## Memorandum

TO: Thomas Peele  
Reporter, The Chauncy Bailey Project  
Oakland Tribune

DATE: February 8, 2008

PAGE: 2

RE: Petition to the Supervisor of Records

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For the reasons set forth below, the Supervisor of Records has determined that the Adult Probation Department properly withheld the Department's sign-in sheets for probationers.

Court records are specifically excluded from disclosure under the Public Records Act (the "Act"). The Act applies to state agencies (Cal. Gov't Code §6252(d)), but defines a "state agency" to exclude agencies provided for in Article VI of the California Constitution. Cal. Gov't Code §6252(f). Article VI of the California Constitution describes the state's court system. As noted in *Copley Press, Inc. v. Superior Court*, 6 Cal.App.4<sup>th</sup> 106, at 111 (1992), this provision<sup>2</sup> of the Act "has been described as 'unambiguous language [which] speaks clearly on this point and . . . expressly exempts the state court from the provisions of the Act. [Citation omitted.]"

California Penal Code Section 1203.10 ("Section 1203.10") makes the records of probation departments court records. Section 1203.10 provides as follows:

Sec. 1203.10. Adult probation officers; investigation and report; recommendations; care of probationer; records

At the time of the plea or verdict of guilty of any person over 18 years of age, the probation officer of the county of the jurisdiction of said criminal shall, when so directed by the court, inquire into the antecedents, character, history, family environment, and offense of such person, and must report the same to the court and file his report in writing in the records of such court. When directed, his report shall contain his recommendation for or against the release for such person on probation. *If any such person shall be released on probation and committed to the care of the probation officer, such officer shall keep a complete and accurate record in suitable books or other form in writing of the history of the case in court, and of the name of the probation officer, and his act in connection with said case; also the age, sex, nativity, residence, education, habit of temperance, whether married or single, and the conduct, employment and occupation, and parents' occupation, and condition of such person committed to his care during the term of such probation and the result of such probation. Such record of such probation officer shall be and constitute a part of the records of the court, and shall at all times be open to the inspection of the court or of any person appointed by the court for that purpose, as well as of all magistrates, and the chief of police, or other heads of the police, unless otherwise ordered by the court. Said books of records shall be furnished for the use of said probation officer of said county, and shall be paid for out of the county treasury.*

Five years after termination of probation in any case subject to this section, the probation officer may destroy any records and papers in his possession relating to such case.

[Emphasis added.]

Under Section 1203.10, persons released on probation are "committed to the care of the probation officer." The probation officer is required to "keep a complete and accurate record . . .

<sup>2</sup> When *Copley* was decided, the definition of "state agency" was set forth in Government Code section 6252(a); the Legislature thereafter amended the Act and the same provision is now set forth in Government Code section 6252(f.)

## Memorandum

TO: Thomas Peele  
Reporter, The Chauncy Bailey Project  
Oakland Tribune

DATE: February 8, 2008

PAGE: 3

RE: Petition to the Supervisor of Records

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in writing of the history of the case" and certain other information, including the conduct of the probationer. As noted by Chief Deputy Boyd, when probationers come to the San Francisco Adult Probation Department to meet with their assigned probation officers, they sign a "sign-in" sheet to record that fact. As Chief Deputy Boyd states, the sign-in sheets "represent a portion of those records maintained regarding a probationer's conduct during the term of probation" as required under Section 1203.10. Accordingly, as Chief Deputy Boyd further states, they "constitute a part of the records of the court."

In adopting Section 1203.10, the Legislature has not only specified that probation records are court records, but has also specified those persons who may have access to them. The statute provides that the court, any person appointed by the court, magistrates, the chief of police, and other heads of the police, unless otherwise ordered by the court, may have access to these records. You are not any of the officials listed in Section 1203.10. Nor has the court issued an order appointing you as a person entitled to access. Therefore, Chief Deputy Boyd properly withheld the sign-in sheets in response to your public records request.

The court decision cited by Chief Deputy Boyd, *McGuire v. Superior Court*, 12 Cal.App.4<sup>th</sup> 1685 (1993), supports this conclusion. In *McGuire*, a probationer requested a copy of his own probation file under the California Public Records Act. The probation department refused the request, contending that the records were court records and therefore protected from disclosure. The court in *McGuire* ruled in favor of the probation department, holding that the probation file is a court record and that court records are not subject to disclosure under the Public Records Act. *McGuire* further held that the court itself has the discretion to allow a probationer to inspect his probation file or a portion of it, but found that the probationer before the court had failed to show good cause for such inspection. See, also, *County of Placer v. Superior Court*, 30 Cal.App.4<sup>th</sup> 807 (2005) (holding that Section 1203.10 gives the trial court the authority to allow a probationer to inspect portions of his probation file and noting that "probation department records are court records" (at p. 812) and that "[i]n supervising [the probationer], and in compiling and keeping the required records, the probation department acted as an arm of the court" (at p. 814)).

The San Francisco Adult Probation Department properly withheld the sign-in sheets that you requested. Accordingly, your petition is denied.

P.J.

cc: Chief Deputy Adult Probation Officer Patrick J. Boyd

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA  
City Attorney

OFFICE OF THE CITY ATTORNEY

PAULA JESSON  
Deputy City Attorney

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

MEMORANDUM

TO: Dee Modglin  
FROM: Paula Jesson *PJ*  
Deputy City Attorney  
DATE: March 3, 2008  
RE: Petition to Supervisor of Records

On February 22, 2008, you sent two email communications asking this office for assistance in obtaining compliance by the Mayor's Office of Housing ("MOH") with various provisions of the San Francisco Sunshine Ordinance.

We have reviewed the issues that you raise and have concluded that none fall within the jurisdiction of the Supervisor of Records. The role of the Supervisor of Records is delineated as follows in San Francisco Administrative Code Section 67.21(d):

(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 petition, 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. [Emphasis added.]

The role of the Supervisor of Records is thus limited to determining whether a record that has been requested is public.

Your petition raises four issues. First, you state "that there is an ongoing [Sunshine Ordinance] complaint against MOH regarding failure to release an accounting and number of pages of ACP [presumably this refers to attorney-client privileged] docs as well as continued withholding of records requested . . . . Also, can you identify the number and type of documents that have been withheld under attorney client privilege pertaining to all the LMI CCP [presumably this refers to Low Moderate Income Condominium Conversion Program] units and communication whether hard copy [or] electronic?"

As we understand it, this part of your petition asks that the Supervisor of Records determine whether MOH is required to provide either a log of documents exempt from disclosure or possibly a statement under Section 67.21(c) of "the existence, quantity, form and nature of records" that MOH has withheld in response to your request for records, based on the attorney-

CITY HALL - 1 DR. CARLTON B. SAN FRANCISCO, CALIFORNIA 94102  
RECEPTION: (415) 554-4700 FACSIMILE: (415) 554-4747

n:\govern\pjesson\supervisorofrecords\dmodg.doc



## Memorandum

TO: Dee Modglin  
DATE: March 3, 2008  
PAGE: 2  
RE: Petition to Supervisor of Records

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client privilege. A determination of either of these issues is not a determination whether a record that has been requested is public. Accordingly, we do not consider or make a determination regarding these issues.

Second, you state that "[t]he claim has been made that there are no emails pertaining to the LMI CCP for Matt Franklin and Marvelin Rance when in fact there have been such communications and they have not been placed in any unit files as they sometimes pertain to general administration etc. I would like your verification that all emails from and to Matt Franklin and Marvelin Rance no longer exist."

Your concern here appears to be that MOH has not conducted an adequate search of its files for the records that you requested. This office's obligation under Section 67.21(d) assumes that a City department has located a record but is withholding it based on an exception from disclosure set forth in the Sunshine Ordinance or other applicable law. The role of the Supervisor of Records is to determine whether the City department is lawfully relying on the claimed exception, not to rule on the adequacy of a department's search for records. Given the limited role of the Supervisor of Records, we decline to address a complaint that a City department has not adequately searched for records in response to a public records request.

Third, in the paragraph immediately following the portion quoted in the previous paragraph, your petition asks the following: "Is there a record retention requirement of such communication/documents that pertain to the administration and sometimes also to specific CCP units? If so, how long?" These questions do not fall within the jurisdiction of the Supervisor of Records and are therefore not addressed in this determination.

Fourth, you state as follows:

"The emails requested were originally approved by MOH to be obtained via electronic format. However, we were subsequently denied this format and had to pay .10 cents per copy.

Please advise how to go about obtaining electronic communication via cd/disk as was previously approved by MOH but subsequently denied and we have had to pay thousands of dollars to obtain copies of such documents. It appears that this is in violation of SO procedures.

Is there a way to get a refund for such copy costs?"

Again, because these issues do not involve a determination whether a requested record is public, this determination does not address them.

Without addressing the merits of the issues raised in your petition because none falls within the jurisdiction of the Supervisor of Records, the Supervisor of Records denies your petition.

P.J.

cc: Douglas Shoemaker  
Deputy Director, MOH

Paula Jesson/CTYATT  
04/24/2008 04:19 PM

To "Kimo Crossman" <kimo@webnetic.net>@SFGOV  
cc "Allen Grossman" [REDACTED],  
home@prosf.org, kevin.ryan@sfgov.org  
bcc  
Subject Re: APPEAL: Immediate Disclosure Request - DA Harris  
Federal grant investigation

Dear Mr. Crossman,

I have been provided with a copy of a letter sent to you today by e-mail from Matt Dorsey, Press Secretary for this office, in response to the public records request that is the subject of your petition. The letter informs you that because the program that is the subject of your request involved several different City agencies, the City Attorney's Office would be working in conjunction with those agencies to provide a coordinated response to requests for records related to the program. Mr. Dorsey's letter also indicates that Mr. Dorsey is providing you with records and that the office will continue the process of gathering and evaluating a large number of documents that may be responsive and will provide you with nonexempt responsive records promptly as they become available.

The role of the Supervisor of Records is to determine whether a record that a department withholds in response to a public records request is being lawfully withheld. When, and if, the City Attorney's Office informs you that it has a record responsive to your request but that it is not required to produce it because of an exception or exemption provided under applicable law, you may ask the Supervisor of Records to review that decision.

The Supervisor of Records is denying your petition at this time as premature. As you know, you can file another petition if the City Attorney's Office informs you that it has a record or records responsive to your request that it is declining to provide to you.

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>



"Kimo Crossman"  
<kimo@webnetic.net>  
04/11/2008 05:32 PM

To <kevin.ryan@sfgov.org>, "Paula Jesson"  
<Paula.Jesson@sfgov.org>  
cc <home@prosf.org>, "Allen Grossman"  
[REDACTED]  
Subject APPEAL: Immediate Disclosure Request - DA Harris Federal  
grant investigation

This is an Appeal to the Supervisor of Records, no response from this office has been received



Paula Jesson/CTYATT  
04/28/2008 05:07 PM

To "Kimo Crossman" <kimo@webnetlc.net>@SFGOV  
cc "Allen Grossman" [REDACTED]  
home@prosf.org, "Islais Wharf" [REDACTED]  
Kevin Ryan/MAYOR/SFGOV@SFGOV  
bcc  
Subject RE: APPEAL: Immediate Disclosure Request - DA Harris  
Federal grant investigation [REDACTED]

Dear Mr. Crossman,

The Supervisor of Records agrees that there may be circumstances where a department's failure to comply, or to comply completely, warrants a determination by the Supervisor of Records. At this point, we do not find the matter in question to be one of those circumstances. There are multiple requests to multiple departments for records relating to the federal grant program in issue. You have been informed that the City departments whose records have been requested have arranged a coordinated response through the City Attorney's Office. The City has provided some key documents related to the City's participation in the program (posting them on the City Attorney's website), has informed you that it is in the process of gathering and evaluating a large number of documents that may be responsive to your request, and has informed you that it will provide you nonexempt responsive records promptly as they become available. In our view, a response at this time would be premature.

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  
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email: paula.jesson@sfgov.org  
"Kimo Crossman" <kimo@webnetlc.net>



"Kimo Crossman"  
<kimo@webnetlc.net>  
04/24/2008 07:43 PM

To "Paula Jesson" <Paula.Jesson@sfgov.org>  
cc "Allen Grossman" [REDACTED]  
<home@prosf.org>, <kevin.ryan@sfgov.org>, "Islais Wharf"  
Subject RE: APPEAL: Immediate Disclosure Request - DA Harris  
Federal grant investigation

Ms. Jesson,

We believe the role of the Supervisor of Records is indeed more than just determining if a record is discloseable or not, Please inform us if that is not your view and we will file a Sunshine Complaint to allow this to be discussed publicly. The ordinance is clear that the role includes obtaining discloseable records that have been partially or not produced at all requires you to refer the matter to the AG and DA.

Paula Jesson/CTYATT  
07/22/2008 12:05 PM

To kimo@webnetic.net  
cc  
bcc  
Subject Re: Petition to Supervisor of Records (border crime grant)

Dear Mr. Crossman,

This message concerns your petition to the Supervisor of Records regarding your request for documents related to the dispute over federal grant money for border crime prosecutions. I have been provided with a copy of a message that Public Information Officer Matt Dorsey sent you on 7/11/2008 regarding your request.

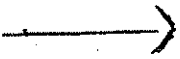
In that message, which transmitted a number of records to you, Mr. Dorsey noted - as he had in a previous communication - that the City Attorney's office is the point of contact for requests for public records on this issue.

In addition, Mr. Dorsey noted that the City Attorney's office had provided you with numerous key documents responsive to your request, that there remain voluminous additional documents that are related to the City's participation over several years in the program, that your request for records is extremely broad and vague as to the specific records you would like to inspect, and that the City Attorney's office limits to a reasonable amount of time what it spends responding to your requests to permit the office to perform its duties.

Finally, Mr. Dorsey noted that the City Attorney's office will produce additional records on an incremental basis and that you may at any time narrow or prioritize your request, in which case the office would adjust its disclosures accordingly.

Thus, the City Attorney's office has provided you with numerous records and informed you of its procedure for completing its response. If in the course of responding to your request, it declines to provide any records, you are of course free to appeal the decision to the Supervisor of Records.

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



Paula Jesson/CTYATT  
05/09/2008 12:21 PM

To "Kimo Crossman" <kimo@webnetic.net>@SFGOV  
cc "Allen Grossman" [REDACTED]  
bcc  
Subject RE: Appeal to Supervisor of RECORDS : Immediate Disclosure Request

My response to your petition regarding the border prosecution grant funds already responded to this issue.

As to the other pending appeal (advice to the Board on unredacted phone bills), you have been informed that this office has found it necessary to limit the time spent responding to your requests for the reasons fully explained in letters sent to you on January 12, 2006 by Matt Dorsey and January 17, 2008 by Alexis Thompson.

Paula Jesson  
Deputy City Attorney  
City and County of San Francisco  
Room 325 City Hall  
1 Dr. Carlton B. Goodlett Place  
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Telephone: (415) 554-6762  
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email: paula.jesson@sfgov.org  
"Kimo Crossman" <kimo@webnetic.net>



"Kimo Crossman"  
<kimo@webnetic.net>  
.05/09/2008 11:59 AM

To "Paula Jesson" <Paula.Jesson@sfgov.org>  
cc "Allen Grossman" [REDACTED]  
Subject RE: Appeal to Supervisor of RECORDS : Immediate Disclosure Request

Isn't an overdue response a failure to comply?

"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 California Public Records Act is quite clear that these cases involving failure to disclose public records must be handled expeditiously when an action is brought to enforce a right of inspection or to receive a copy of public records. Section 6258 provides that the "... times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time." If you want to understand the importance of this policy, I suggest you read Filarsky v. Superior Court (City of Manhattan Beach), a 2002 case found at 28 Cal.4th 419, 121 Cal.Rptr.2d 844 These appeals represent the last opportunity for persons who are denied access to public records to get them without having to incur the significant hearings or legal procedures.

CPRA requires a Prompt response and Sunshine requires no unreasonable delay as well as incremental delivery if requested.

In fact your failure to provide a prompt appeal is a direct Sunshine Violation

→ **From:** Paula Jesson [mailto:Paula.Jesson@sfgov.org]  
**Sent:** Friday, May 09, 2008 11:44 AM  
**To:** kimo@webnetic.net  
**Subject:** RE: Appeal to Supervisor of RECORDS : Immediate Disclosure Request

There are two pending appeals: records regarding the federal grant for border crime prosecutions (you've received a response to this - will consider when the department had responded) and written advice to the Board regarding unredacted telephone bills (you have clarified the request - will consider when the department has responded).

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>

05/08/2008 06:08 PM

To: "Paula Jesson" <Paula.Jesson@sfgov.org>  
Cc: "Rohan Lane" <RohanLane@sfgov.org>  
Subject: RE: Appeal to Supervisor of RECORDS : Immediate Disclosure Request

Yes thank you.

Ms. Jesson

I have filed a number of other appeals with you – what is there status?

**From:** Paula Jesson [mailto:Paula.Jesson@sfgov.org]  
**Sent:** Thursday, May 08, 2008 11:38 AM



Matt Dorsey/CTYATT  
06/09/2008 03:57 PM

To "Kimo Crossman" <kimo@webnetc.net>@SFGOV  
cc  
bcc Paula Jesson/CTYATT  
Subject Response

Dear Mr. Crossman,

You ask for "any written advice the City Attorney provided the Supervisors on their responsibility to turn over call detail records [of unredacted telephone bills] in 2002 as well as any subsequent advice to any city officials on their responsibility to provide this information including the Mayor and Department heads." Email message of May 6, 2008 5:18 PM.

The only records responsive to your request are protected by the attorney client privilege. These records were submitted to the Board of Supervisors in connection with a closed session on March 4, 2003 regarding litigation threatened by Michael Stoll on his request for unredacted telephone records of members of the Board. See California Government Code Section 54963 (prohibiting disclosure of confidential information acquired by being present in a closed session).

Best,  
MATT DORSEY

---

OFFICE OF CITY ATTORNEY DENNIS HERRERA  
San Francisco City Hall, Room 234  
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(415) 554-4715 Facsimile  
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<http://www.sfgov.org/cityattorney/>

Paula Jesson/CTYATT  
06/23/2008 12:01 PM

To "Kimo Crossman" <kimo@webnetic.net>@SFGOV  
cc  
bcc  
Subject RE: Supervisor of Records response

Dear Mr. Crossman,

On 4/25/2008, you appealed this office's not having responded to your request for "all written communications and documents regarding this matter . . . . "When the supervisors refused to release copies of their unredacted telephone bills to the reporter in June 2002, the task force found them guilty of violating the Sunshine Ordinance. But the City Attorney's Office advised the board this February that the law does not require them to release the records."

In response to a request for clarification, you explained that "my request is any written advice the City Attorney provided the Supervisors on their responsibility to turn over call detail records [of unredacted telephone bills] in 2002 as well as any subsequent advice to any city officials on their responsibility to provide this information including the Mayor and Department heads."

I have been provided with an email message from Public Information Officer Matt Dorsey dated 6/9/2008 responding to your request. Mr. Dorsey informed you in the response that the only records responsive to the request are protected by the attorney client privilege.

As noted, you appealed the office's non-response to your request and the office has provided a response. Accordingly, the Supervisor of Records considers this matter moot and denies your petition on that basis.

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>  
08/08/2008 03:11 PM

To "Supervisor of Records Paula Jesson Office City Attorney"  
<Paula.Jesson@sfgov.org>

cc

bcc

Subject RE: APPEAL: OVERDUE: Immediate Disclosure Request:  
Open Gov Advice prepared in advance of closed session

Please note that there is no longer any threat of litigation here.

**From:** Kimo Crossman [mailto:kimo@webnetic.net]  
**Sent:** Thursday, July 03, 2008 3:20 PM  
**To:** 'Matt Dorsey'; 'Cityattorney'; 'Supervisor of Records Paula Jesson Office City Attorney'  
**Subject:** APPEAL: OVERDUE: Immediate Disclosure Request: Open Gov Advice prepared in advance of closed session  
**Importance:** High

Based on Matt's nonresponse, we are appealing this to the Supervisor of Records

**From:** Kimo Crossman [mailto:kimo@webnetic.net]  
**Sent:** Tuesday, July 01, 2008 9:40 PM  
**To:** 'Matt Dorsey'; 'Cityattorney'; 'Supervisor of Records Paula Jesson Office City Attorney'  
**Subject:** OVERDUE: Immediate Disclosure Request: Open Gov Advice prepared in advance of closed session  
**Importance:** High

**From:** Kimo Crossman [mailto:kimo@webnetic.net]  
**Sent:** Thursday, June 26, 2008 8:18 PM  
**To:** 'Matt Dorsey'; 'Cityattorney'; 'Supervisor of Records Paula Jesson Office City Attorney'  
**Subject:** Immediate Disclosure Request: Open Gov Advice prepared in advance of closed session  
**Importance:** High

This is an Immediate Disclosure Request for any of the following:

Proof of threatened litigation was used to justify a closed session

All relevant correspondence and advice per 67.24

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance. Please email it incrementally per Sunshine

**From:** Kimo Crossman [mailto:kimo@webnetic.net]  
**Sent:** Wednesday, June 25, 2008 9:53 PM  
**To:** 'Matt Dorsey'; 'Cityattorney'; 'Supervisor of Records Paula Jesson Office City Attorney'  
**Subject:** RE: Open Gov Advice prepared in advance of closed session

What proof of threatened litigation was used to justify a closed session?

Also Open Government advice is not confidential information in the first place.

**From:** Kimo Crossman [mailto:kimo@webnetic.net]  
**Sent:** Thursday, June 19, 2008 7:43 AM  
**To:** 'Matt Dorsey'  
**Subject:** RE: Open Gov Advice prepared in advance of closed session

**From:** Kimo Crossman [mailto:kimo@webnetic.net]  
**Sent:** Tuesday, June 17, 2008 5:34 PM  
**To:** 'Matt Dorsey'  
**Subject:** RE: Open Gov Advice prepared in advance of closed session  
**Importance:** High

**From:** Kimo Crossman [mailto:kimo@webnetic.net]  
**Sent:** Monday, June 09, 2008 10:49 PM  
**To:** 'Matt Dorsey'  
**Subject:** Open Gov Advice prepared in advance of closed session

What proof of threatened litigation was used to justify a closed session?

Also Open Government advice is not confidential information in the first place.

**From:** Matt Dorsey [mailto:Matt.Dorsey@sfgov.org]  
**Sent:** Monday, June 09, 2008 3:58 PM  
**To:** kimo@webnetic.net  
**Subject:** Response

Dear Mr. Crossman,

You ask for "any written advice the City Attorney provided the Supervisors on their responsibility to turn over call detail records [of unredacted telephone bills] in 2002 as well as any subsequent advice to any city officials on their responsibility to provide this information including the Mayor and Department heads."  
Email message of May 6, 2008 5:18 PM.

The only records responsive to your request are protected by the attorney client privilege. These records were submitted to the Board of Supervisors in connection with a closed session on March 4, 2003 regarding litigation threatened by Michael Stoll on his request for unredacted telephone records of members of the Board. See California Government Code Section 54963 (prohibiting disclosure of confidential information acquired by being present in a closed session).

Best,  
MATT DORSEY

---

OFFICE OF CITY ATTORNEY DENNIS HERRERA  
San Francisco City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682

(415) 554-4662 Direct  
(415) 554-4700 Reception  
(415) 554-4715 Facsimile  
(415) 554-6770 TTY

<http://www.sfgov.org/cityattorney/>



Matt Dorsey/CTYATT  
07/28/2008 10:56 AM

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

cc

bcc Paula Jesson/CTYATT

Subject Re: Open Gov Advice prepared in advance of closed session

Dear Mr. Crossman,

On June 9, 2008, I responded to your request for "any written advice the City Attorney provided the Supervisors on their responsibility to turn over call detail records [of unredacted telephone bills] in 2002 as well as any subsequent advice to any city officials on their responsibility to provide this information including the Mayor and Department heads." In my response, I informed you that the only responsive records that this office has were submitted to the Board of Supervisors in connection with a closed session regarding threatened litigation and that they are protected by the attorney-client privilege.

On June 9, 2008, you replied to my response: "What proof of threatened litigation was used to justify a closed session?"

The basis for the closed session by the Board of Supervisors on March 4, 2008 is set forth in the agenda item as follows:

"CLOSED SESSION  
CONFERENCE WITH CITY ATTORNEY - Anticipated Litigation  
City as Defendant  
32. 030320 [Closed Session - Anticipated Litigation As Defendant]  
Motion that the Board of Supervisors convene in closed session with the City Attorney for the purpose of conferring with, or receiving advice from, the City Attorney regarding anticipated litigation (City anticipated to be a defendant) which may occur regarding a requested disclosure of unredacted telephone records of members of the Board of Supervisors by Michael Stoll. At a February 25, 2003, meeting of the Sunshine Ordinance Task Force, Mr. Stoll threatened litigation against the Board of Supervisors if he did not receive the requested telephone records. The City Attorney advises that, based upon Mr. Stoll's statement, there is a significant exposure to litigation against the City.  
Government Code Section 54956.9(b) and San Francisco Administrative Code Section 67.10(d)(2) would permit this closed session. (City Attorney)"

Best,  
MATT DORSEY

OFFICE OF CITY ATTORNEY DENNIS HERRERA  
San Francisco City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
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(415) 554-4700 Reception  
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(415) 554-6770 TTY

<http://www.sfgov.org/cityattorney/>

"Kimo Crossman" <kimo@webnetic.net>



"Kimo Crossman"  
<kimo@webnetic.net>  
06/09/2008 10:48 PM

To "Matt Dorsey" <Matt.Dorsey@sfgov.org>

cc

→  
Paula Jesson/CTYATT  
04/16/2008 05:12 PM

To "Kimo Crossman" <kimo@webnetic.net>@SFGOV  
cc "Alexis Thompson" <Alexis.Thompson@sfgov.org>,  
buck.delventhal@sfgov.org, cityattorney@sfgov.org, "allen  
Grossman" [REDACTED], home@prosf.org,  
bcc  
Subject Re: APPEAL: Immediate Disclosure Request "Current Issues  
in Responding to Public Records Requests" [REDACTED]

Dear Mr. Crossman,

You have filed a petition with the Supervisor of Records regarding your request for "all billing records associated with the creation of and actual presentation of these documents [relating to a presentation by Deputy City Attorney Paul Zarefsky on 'Current Issues in Responding to Public Records Requests'] incurred by your office." You stated in your petition: "no response from the City Attorney to date."

I have received a copy of an email sent to you by Alexis Thompson dated April 14, 2008 responding to your request.

In light of this response, the Supervisor of Records finds that this matter is moot and denies your petition on that basis.

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>



"Kimo Crossman"  
<kimo@webnetic.net>  
04/10/2008 05:34 PM

To "Matt Dorsey" <Matt.Dorsey@sfgov.org>, "Alexis  
Thompson" <Alexis.Thompson@sfgov.org>,  
<home@prosf.org>, "allen Grossman"  
[REDACTED], <cityattomey@sfgov.org>,  
"Paula Jesson" <Paula.Jesson@sfgov.org>  
cc <Paul.Zarefsky@sfgov.org>, <buck.delventhal@sfgov.org>  
Subject APPEAL: Immediate Disclosure Request "Current Issues in  
Responding to Public Records Requests"

**THIS IS AN APPEAL TO SUPERVISOR OF RECORDS – NO  
Response from City Attorney to date.**

From: Kimo Crossman [mailto:kimo@webnetic.net]  
Sent: Wednesday, April 09, 2008 7:13 PM  
To: 'Matt Dorsey'; 'Alexis Thompson'; 'home@prosf.org'; 'allen Grossman'; 'cityattorney@sfgov.org'

Paula Jesson/CTYATT  
06/03/2008 04:22 PM

To kimo@webnetic.net  
cc  
bcc  
Subject Re: APPEAL: Immediate Disclosure Request "Responding to Public Records Requests by Paul Zarefsky"

Dear Mr. Crossman,

By email of 05/09/2008 12:15 PM, you submitted an appeal to the Supervisor of Records requesting "all emails and attachments in their original electronic format which Mr. Zarefsky was a party to, that relate to his presentation *Current Issues in Responding to Public Records Act Requests* which he gave on 5/4/07 and any other public talks or writings by him on these concepts in 2007 or 2008." You further asked for "properly redacted billing records for these efforts (you may exclude the ones already provided)"; "any public announcements and any revised materials for these matters (excluding the League announcement on 5/4/08)"; and "[a]ny records of consideration Mr Zarefsky or the City received in relation to these matters. (Per Diem, discounted admission, speaker benefits, royalties, etc.)."

Deputy Press Secretary Alexis Thompson responded to your request in several email communications (on April 14, May 21, and May 29, 2008). Ms. Thompson provided certain responsive records but, in some cases, informed you that this office had no responsive records. In her most recent message of May 29, 2008, Ms. Thompson said that this office had "mistakenly neglected to inform you that this office has records relating to Mr. Zarefsky's presentation, but all are protected by the work product doctrine. California Code of Civil Procedure Section 2018.030." Ms. Thompson also informed you that the office could make available to you a record sent to the SOTF that you may already have and that may be responsive to your request, and that a search could be made for relevant billing records related to that record.

In light of Ms. Thompson's communications responding to your public records request, the Supervisor of Records considers this matter moot and denies your petition on that basis. If you believe that any of these responses provide a basis for further appeal, you may of course submit another 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

Paula Jesson/CTYATT  
11/03/2008 11:50 AM

To kimo@webnetic.net  
cc  
bcc  
Subject Petition to Supervisor of Records - Records regarding  
professional activities

Dear Mr. Crossman,

This response concerns your petition to the Supervisors of Records regarding a request for records relating to the "creation or presentation of various training materials or handbooks and other outside professional activities" by a deputy in this office. This request was one in a series of email requests. The first in the series was sent to the City Attorney's Office on 06/20/2007 for "all records in their native format generated by your office for the presentation by Mr. Zarefsky at the May 4th 2007 [sic] City Attorneys Spring Conference "Current Issues in Responding to Public Records Requests" and "any subsequent emails or reports as a result of the presentation." The office provided records responsive to your request on June 21, 2007.

You then asked for billing records associated with the presentation. The City Attorney's Office provided records in response the request on April 14, 2008. (The matter at this point was the subject of a petition to the Supervisor of Records sent 04/10/2008 and responded to 04/16/2008.)

Thereafter, you asked for records "which Mr. Zarefsky was a party to, that related to his presentation [Current Issues] . . . and any other public talks or writing by him on these concepts in 2007 or 2008," billing records for these efforts, and any records of consideration that Mr. Zarefsky received regarding these matters. On May 21, 2008, the City Attorney's Office responding, stating that there were no responsive records.

On 05/21/2008, you sent a message saying you had received information that Mr. Zarefsky presented this or a similar talks at other occasions and asked if there were no records related to it. On May 29, 2008, the City Attorney's Office responded, stating that it needed to correct an earlier response because it had "mistakenly neglected to inform you that this office has records relating to Mr. Zarefsky's presentation, but all are protected by the attorney work product doctrine." The May 29, 2008 response further stated that the only other record that may be responsive is a letter sent to the Sunshine Ordinance Task Force in February 2007 and offering to provide you with a copy.

On May 29, 2008, you sent an email message saying you had the impression that Mr. Zarefsky had provided advice for "creation or presentation of various training materials or handbooks and other outside professional activities" and asking for records related to them. On 10/07/2008, you filed a petition to the Supervisor of Records regarding your May 29, 2008 request, indicating that you had received no response.

The Supervisor of Records has been provided with a copy of a response to your request dated 10/17/2008 from this office.

In light of that response, the Supervisor of Records finds your appeal moot and denies the petition on that basis.

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

Paula Jesson/CTYATT  
06/23/2008 12:00 PM

To "Kimo Crossman" <kimo@webnetic.net>@SFGOV  
cc  
bcc  
Subject Re: Supervisor of Records response

Dear Mr. Crossman,

This letter responds to your petition to the Supervisor of Records sent by email on 5/24/2008 seeking review of this office's not having responded to your request for the Word version of a September 25, 2007 letter and attachment setting forth written charges of official misconduct "In the Matter of Charges Against Edmund Jew."

I have been provided with a copy of an email dated 6/4/2008 from Public Information Officer Matt Dorsey responding to your request. Mr. Dorsey informed you that the office was declining to produce the record in question, which you have in PDF format, for the reasons provided in the opinion of the City Attorney (available on the office's web site) explaining the basis for the office's conclusion that neither the Public Records Act nor the Sunshine Ordinance requires City departments to provide a record in Word.

As noted, you appealed the office's non-response to your request and the office has provided a response. Accordingly, the Supervisor of Records considers this matter moot and denies your petition on that basis.

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>



"Kimo Crossman"  
<kimo@webnetic.net>  
05/24/2008 12:15 AM

To "Paula Jesson" <Paula.Jesson@sfgov.org>  
cc  
Subject APPEAL: Immediate Disclosure Request

No response from this department, please process a petition for records.

**From:** Kimo Crossman [mailto:kimo@webnetic.net]  
**Sent:** Saturday, May 24, 2008 12:13 AM  
**To:** 'Alexis Thompson'; 'Cityattorney'  
**Subject:** OVERDUE: Immediate Disclosure Request  
**Importance:** High





Paula Jesson/CTYATT  
07/15/2008 03:48 PM

To "Kimo Crossman" <kimo@webnetic.net>@SFGOV  
cc  
bcc  
Subject Re: Supervisor of Records response

Dear Mr. Crossman,

This message responds to your petition to the Supervisor of Records of the decision by this office not to provide you with the "Word version" of a record that you have in PDF, a September 25, 2007 letter to the Board of Supervisors and Ethics Commission from the Mayor transmitting written charges of official misconduct "In the Matter of Charges Against Edmund Jew."

The office based its decision on an opinion of this office set forth in a memorandum made available on the City Attorney's web site, dated September 19, 2006, "Providing Electronic Records in PDF Rather Than Word Format When Responding To A Public Records Request."

In support of your petition, you cite various provisions of the California Public Records Act and the San Francisco Sunshine Ordinance. The Supervisor of Records has reviewed these provisions and has determined that the opinion of this office set forth in the September 19, 2006 opinion is correct. Therefore, your petition is denied.

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>



"Kimo Crossman"  
<kimo@webnetic.net>  
08/30/2008 12:49 PM

To "Paula Jesson" <Paula.Jesson@sfgov.org>  
cc  
Subject APPEAL: Supervisor of Records response

What is your opinion on this matter? I believe this is a violation of the following:

CPRA: 6253(b) (exact copy), 6253.9, Sunshine: 67.21 (L), 67.21-1, 67.26 (withholding of metadata), 67.27

From: Paula Jesson [mailto:Paula.Jesson@sfgov.org]  
Sent: Monday, June 23, 2008 12:00 PM

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA  
City Attorney

OFFICE OF THE CITY ATTORNEY

PAULA JESSON  
Deputy City Attorney

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

MEMORANDUM

TO: Amanda Witherell  
Reporter, San Francisco Bay Guardian

FROM: Paula Jesson  
Deputy City Attorney

DATE: August 20, 2008

RE: Petition to Supervisor of Records (Plans for Constructing and Retrofitting Power Plants)

On July 29, 2008, you submitted a petition to the Supervisor of Records regarding your request to the Mayor's Office of Communications for records "generated between May 1, 2008 and June 6, 2008, related to San Francisco's Electric Reliability Project, plan to construct combustion turbine power plants, 'CTs,' or 'peakers,' retrofitting Mirant Potrero Power Plant, installing new transmission lines, and performing upgrades and improvements to existing transmission lines, closing Mirant Potrero Unit 3, reliability must run contracts, and redevelopment of property owned by Mirant, PG&E, and/or the city."

By letter dated July 18, 2008, Joe Arellano, Deputy Communications Director, responded to your request. Mr. Arellano informed you that 512 pages were ready for inspection and copying. He also informed you that records protected by the attorney client privilege and the work product doctrine were being withheld; that the "recommendations of the author" were not being disclosed; and the personal home e-mail addresses and certain information about city personnel had been redacted to protect the privacy of those persons.

Your petition asks for review based on the two of these grounds, the right to privacy and recommendations of the author.

Your petition also states as follows: "The exemptions [Mr. Arellano] cites may be within the letter of the law, however their invocation is not in keeping with the spirit of disclosure in which that law was written."

We turn now to the two issues raised in your appeal.

Right to Privacy

Your petition states:

"While I believe in protecting individual privacy, I fear this statute has been arbitrarily enforced. A number of email addresses were redacted in the disclosed documents, yet some personal email addresses were not [specific examples omitted]. This gives the appearance of arbitrary redaction, leading me to believe that some of the redactions have been made not to protect personal information, but to prevent the viewing of certain senders and recipients."

CITY HALL • 1 DR. CARLTON B • SAN FRANCISCO, CALIFORNIA 94102  
RECEPTION: (415) 554-4700 FACSIMILE: (415) 554-4747

n:\govern\pjesson\supervisorofrecords\awith.doc

## Memorandum

TO: Amanda Witherell  
Reporter, San Francisco Bay Guardian

DATE: August 20, 2008

PAGE: 2

RE: Petition to Supervisor of Records (Plans for Constructing and Retrofitting Power Plants)

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The Supervisors of Records finds that some information was redacted with respect to the names of persons sending and receiving the email messages that is not required by privacy concerns. While personal email addresses are properly redacted, only that portion necessary to protect that information should have been redacted. Mr. Arellano has informed me that any "over-redacting" occurred because of the need to review the large number of records involved in a relatively short period of time, not from any intent to improperly withhold information.

Recommendations of the Author

The Mayor's office withheld records under San Francisco Administrative Code Section 67.24(a)(1):

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

(a) Drafts and Memoranda.

(1) Except as provided in subparagraph (2), no preliminary draft or department memorandum, whether in printed or electronic form, shall be exempt from disclosure under Government Code Section 6254, Subdivision (a) or any other provision. If such a document is not normally kept on file and would otherwise be disposed of, its factual content is not exempt under Subdivision (a). Only the recommendation of the author may, in such circumstances, be withheld as exempt.

Section 67.24(a)(1) limits the withholding of records covered by the exemption under the California Public Records Act set forth in Government Code Section 6254(a), which provides:

Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.

Section 67.24(a)(1) thus recognizes the withholding of records under Section 6254(a) of the Public Records Act, but repeats the requirement that withholding is only permitted if the records are "not normally kept on file" and "would otherwise be disposed of," and further provides that even where withholding is permitted, "its factual content" must be made public and "[o]nly the recommendation of the author" may be withheld.

Your petition expresses concern that the Mayor's Office may have improperly withheld records under the Section 67.24(a) "recommendations of the author" exception":

## Memorandum

TO: Amanda Witherell  
Reporter, San Francisco Bay Guardian

DATE: August 20, 2008

PAGE: 3

RE: Petition to Supervisor of Records (Plans for Constructing and Retrofitting Power Plants)

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"Just as this letter to you contains recommendations from me, a literal read of that code could lead one to infer that any and all documents are the "recommendations of the author." I'm concerned that this broad language has been employed in order to favor a narrow read of the law. I have reason to be concerned because there are a number of emails which show that a reply was made, however no replies are included. Other emails show redactions, notated with the reason for redaction, which is a more lawful read of Administrative Code 67.26 which states, "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."

The Supervisor of Records has reviewed the records withheld by the Mayor's Office based on the "recommendations of the author" and finds that all such records were properly withheld except for portions of the following two documents which the Supervisor of Records has determined are disclosable and do not constitute recommendations of the author: email message from David Pascal to Cristine DeBerry dated 5/5/2008 12:08 PM and from Jared Blumenfeld to Cristine DeBerry dated 5/13/2008 12:39 PM. The Supervisor of Records has also determined that portions of an email message from Michael Martin to Michael Cohen and Cristine DeBerry dated 5/21/2008 10:04AM are properly disclosable and do not constitute the recommendations of the author. The Mayor's Office has authorized me to send copies of these documents and they are enclosed.

It may also be appropriate here to clarify something that Mr. Arellano told you. As you noted, Mr. Arellano initially informed you that there were nearly 1,000 pages of documents. But when you were provided with the documents, there were only 512. Mr. Arellano has informed me that he made this reference to 1,000 pages at an early stage in the process of gathering and reviewing the records and that his intent was to indicate that there was a large number of documents, not to estimate the actual number.

Finally, as noted above, you express concern that records may have been improperly withheld because "there are a number of emails which show that a reply was made, however no replies are included." This is the only reference you made to this category of email, so I do not know exactly which email you refer to. It may be that any reply was properly withheld based on the recommendations of the author. If you would like to identify any email by date and sender/receiver, I can look into this issue further.

P.J.

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA  
City Attorney

OFFICE OF THE CITY ATTORNEY

PAULA JESSON  
Deputy City Attorney

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

August 25, 2008

Ann Estrada  
Cozen O'Connor, Attorneys  
425 California Street, Suite 2400  
San Francisco, CA 94101-2215

Re: Petition to Supervisor of Records (Fire Investigation Report)

Dear Ms. Estrada:

You filed a petition to the Supervisor of Records by letter dated August 8, 2008. Your letter states that you are a paralegal to Philip A. Fant at the Cozen O'Connor law firm, which represents Penn-American Insurance Company, insurer of JPT Associates LLC and its building at 25-27 Blanken Avenue in San Francisco. The building was damaged by an April 27, 2008 fire at 15-19 Blanken Avenue.

Your appeal concerns a Fire Investigation Report relating to the incident, a copy of which Cozen O'Connor had requested and obtained from the San Francisco Fire Department. The copy of the report that the Fire Department provided to Cozen O'Connor included the names of witnesses to the incident but redacted their home and work addresses and telephone numbers. Your letter asks for an unredacted copy of the report and states that your firm needs to obtain complete information for the witnesses in order to further investigate recovery options for your client.

In your petition, you rely on Government Code Section 6254(f), which requires law enforcement agencies to disclose the "names and addresses of persons involved in, or witnesses other than confidential informants to, the incident . . . to . . . an insurance carrier against which a claim has been or might be made . . . ."

I have been informed that the Fire Department has now provided you with all addresses, whether home or work addresses, of the witnesses listed in the report. In addition, the Department has provided you with any work telephone numbers of witnesses listed in the report.

However, the Fire Department has not provided witnesses' non-work phone numbers. The Supervisor of Records finds that withholding this information is permissible. Government Code Section 6254(f) does not include telephone and cell phone numbers among the types of information that must be disclosed. Individuals have a right to privacy in their home and cell phone numbers and withholding is authorized under California Constitution, Article I, section 1, and California Government Code Section 6254(k) and California Government Code Section 6254(c) (guarding against disclosure of information that would invade personal privacy). Further, both the California Public Records Act (California Government Code Section 6250) and the San Francisco Sunshine Ordinance (San Francisco Administrative Code Section 67.1(g)) acknowledge the importance of protecting personal privacy when disclosing records in response to a public records request.

---

CITY HALL - 1 DR. CARLTON B - SAN FRANCISCO, CALIFORNIA 94102  
RECEPTION: (415) 554-4700 FACSIMILE: (415) 554-4747

n:\govern\pjesson\supervisorofrecords\estrada.doc

Letter to Ann Estrada  
Page 2  
August 25, 2008

Because the Fire Department has provided you with all of the information from the report that the Supervisor of Records has determined is lawfully required, your petition is denied.

Very truly yours,

DENNIS J. HERRERA  
City Attorney



Paula Jesson  
Deputy City Attorney

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA  
City Attorney

OFFICE OF THE CITY ATTORNEY

PAULA JESSON  
Deputy City Attorney

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

October 15, 2008

William Blake Gray

San Francisco, CA 94110

Re: Petition to Supervisor of Records: San Francisco Police Department Records

Dear Mr. Gray:

On September 30, 2009, I received a petition to the Supervisor of Records regarding your request to the San Francisco Police Department to review two categories of records. The first was "all citations and arrest reports filed by Officer Jerry Neitz in 2008." The second was for "all citations issued to pedestrians by the Mission Police District in 2008."

By letter dated September 30, 2008, Maureen Conefrey of the Police Department's Legal Division sent you a response to your request. Apparently the response was to a broader request, because the September 30 letter refers to four requests, not two. However, it is my understanding that the first two responses set forth in the September 30 letter address the two categories of records that you submitted to the Supervisor of Records.

With respect to your first request, Ms. Conefrey provided you with incident reports relating to arrests by Officer Neitz for the relevant time period. You informed me in a 10/10/2008 email that these records covered seven arrests.

With respect to the request for citations issued to pedestrians by the Mission Police District, Ms. Conefrey informed you that the Police Department "does not have the format or capability to search for the specific documents you are requesting." Ms. Conefrey suggested you review the Public CrimeMaps Website for the information.

I have discussed your request with Ms. Conefrey. She informs me that she obtained the records relating to arrests by Officer Neitz by searching incident reports (which report a variety of incidents, including incidents involving arrests) by Officer Neitz's star number.

Ms. Conefrey also informs me that she spoke with a manager in the Records Division of the Police Department who confirmed that the search that Ms. Conefrey undertook to obtain records of Officer Neitz's arrests and citations is correct. She further informed me that when there is more than one officer who arrests a person, only the reporting officer's star number is shown on the report. Therefore, it is possible that Officer Neitz may have engaged in an arrest with another officer or officers but one could not locate that arrest record unless one knew the reporting officer's star number and could therefore do a search with that information.

Finally, Ms. Conefrey said that if you know the location and date of a specific incident, it would be possible to find out from Department of Emergency Management if there had been a call for service for the incident, in which case the Police Department could search for a corresponding incident report.

As to citations, Ms. Conefrey informs me that the Police Department scans citations (the Court maintains citation records) but that the scanned citations are not searchable by officer.

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CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

Letter to William Blake Gray  
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October 15, 2008

Sometimes an officer will attach a citation to an incident report. Ms. Conefrey said that this occurred with respect to one of Officer Neitz's incident reports that she provided to you.

In light of the information provided by Ms. Conefrey, the Supervisor of Record has determined that the Police Department responded properly to your records request.

Very truly yours,

DENNIS J. HERRERA  
City Attorney



Paula Jesson  
Deputy City Attorney





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City Attorney

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## MEMORANDUM

TO: Honorable Members  
Sunshine Ordinance Task Force

FROM: Paula Jesson *PJ*  
Deputy City Attorney

DATE: January 13, 2009

RE: Court Decisions Related to the Sunshine Ordinance  
Companion to Ninth Annual Report of the Supervisor of Records

In response to a request from the Chair of the Sunshine Ordinance Task Force in May of 2008, the City Attorney's Office agreed to report on court decisions that relate to the San Francisco Sunshine Ordinance for the same time period covered by, and as a companion to, the Annual Report of the Supervisor of Records.

We submit this report on court decisions as a companion to the Ninth Annual Report of the Supervisor of Records. This report covers the same time period, October 1, 2007 to September 30, 2008. This report does not include any legal action in which an issue under the Sunshine Ordinance is pending but not yet decided.

This report includes only court decisions that specifically interpret or apply the Sunshine Ordinance. It does not include any court decision involving both the California Public Records Act (or other state law) and the Sunshine Ordinance unless it is clear that some part of the decision was based on the Sunshine Ordinance.

One court decision issued during the reporting period interpreted the Sunshine Ordinance. In *Lim v. City and County of San Francisco*, San Francisco Superior Court No. 08-472073, plaintiff filed an action against the City and County of San Francisco and various officers and employees of the San Francisco Ethics Commission. The Ethics Commission had denied plaintiff's request for a copy of an Ethics Commission investigation of the plaintiff on the ground that records of Ethics Commission investigations are confidential under the City Charter. In two causes of action, the plaintiff alleged that the withholding of these records violated the San Francisco Sunshine Ordinance.

In response to the complaint, the City filed a demurrer, asking the court to dismiss a number of causes of action in the complaint on the ground that the plaintiff would be unable to prevail on them as a matter of law. Among the causes of action that the City sought to dismiss were the two relating to the Sunshine Ordinance. The City argued that the provisions of the City Charter making records of investigations of the Ethics Commission confidential prevail over the provisions of the San Francisco Sunshine Ordinance. The court granted the City's demurrer as to these two causes of action, but gave the plaintiff leave to file an amended complaint based on the California Public Records Act. The effect of the court order is to preclude the plaintiff from alleging that she has a right to the records based on the Sunshine Ordinance.

**Memorandum**

TO: Honorable Members  
Sunshine Ordinance Task Force  
DATE: January 13, 2009  
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RE: Court Decisions Related to the Sunshine Ordinance  
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Plaintiff has until February 28, 2009 to file an amended complaint. She has not yet done so.

P.J.