

Date: March 25, 2008

Item No. 14

File No. 07094

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Referral: Crossman vs City Attorney
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Completed by: Frank Darby

Date: March 19, 2008

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION

February 26, 2008

March 6, 2008

Kimo Crossman
kimo@webnetic.net

Alexis Thompson
City Attorney's Office
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94103

Re: Complaint # 07094 filed by Kimo Crossman against the City Attorney's Office for alleged violation of Sections 67.21 (b) and (l) and 67.21-1 of the Sunshine Ordinance for failure to respond to a request for records, failure to provide records, and failure to post the Department Heads calendar on the website.

Based on the information provided to the Task Force from the Complainant Kimo Crossman, the Respondent Alexis Thompson and hearing public comment, the following Order of Determination is adopted:

The Sunshine Ordinance Task Force finds that the City Attorney's Office violated Sections 67.25, 67.26, and 67.29-5 of the Sunshine Ordinance for failure to respond in a timely manner, failure to keep withholding to a minimum, and failure to provide the requested daily calendar. The department is instructed to provide the responsive documents that have not been provided to Mr. Crossman within 5 days after the issuance of this Order of Determination.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on February 26, 2008 by the following vote: (Pilpel / Williams)

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

Noes: Pilpel

Excused: Craven

A handwritten signature in black ink, appearing to read "D. Comstock".

Douglas Comstock, Chair
Sunshine Ordinance Task Force

cc: Ernie Llorente, Deputy City Attorney
Matt Dorsey, Deputy City Attorney



"Kimo Crossman "
<kimo@webnetic.net>

03/16/2008 12:48 PM

Please respond to
<kimo@webnetic.net>

To "'SOTF'" <sotf@sfgov.org>
cc
bcc
Subject RE: SOTF Admin

Please Confirm

From: Kimo Crossman [mailto:kimo@webnetic.net]
Sent: Friday, March 07, 2008 11:12 AM
To: 'SOTF'
Subject: SOTF Admin

SOTF Admin:

Please include this in the pending combined complaint against the City Attorney for failure to produce various documents

From: Kimo Crossman [mailto:kimo@webnetic.net]
Sent: Thursday, March 06, 2008 4:04 PM
To: 'Alexis Thompson'
Cc: 'Allen Grossman'
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]." ...



DENNIS J. HERRERA
City Attorney

ALEXIS THOMPSON
Public Information Officer

Direct: (415) 554-4653
Email: alexis.thompson@sfgov.org

March 11, 2008

Honorable Members, Sunshine Ordinance Task Force
c/o Frank Darby, Jr., Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
Email: SOTF@SFGov.org

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2008 MAR 11 PM 2:30
BY SM

Re: **Complaint No. #07094, *Kimo Crossman v. City Attorney's Office***

Dear Honorable Task Force Members:

This letter responds to the above entitled complaint from Mr. Kimo Crossman against the Office of the City Attorney, dated March 7, 2008, which contains the Sunshine Ordinance Task Force's Order of Determination on the above referenced complaint. The order instructs the Office of the City Attorney to provide responsive documents to Mr. Crossman within five days, but does not otherwise describe the documents.

To the extent that the Task Force's order instructs this office to provide any calendars other than those maintained by City Attorney Dennis Herrera under S.F. Admin. Code Sec. 67.29-5, we respectfully decline to provide such documents to Mr. Crossman for the reasons I fully explained to him in my attached email of August 23, 2007.

Very truly yours,

DENNIS J. HERRERA
City Attorney

ALEXIS THOMPSON
Public Information Officer



Alexis Thompson /CTYATT

08/23/2007 12:12 PM

To kimo@webnetic.net

cc

bcc

Subject Response to Your Request Regarding the City Attorney's Calendar(s)

Dear Mr. Crossman:

This e-mail responds to your requests under Section 67.21 (b) and Section 67.21 (c) of the Sunshine Ordinance regarding the City Attorney's calendar or calendars.

As you know, this office has already provided you with the City Attorney's "Prop G" calendar, as required by Section 67.29-5 of the Sunshine Ordinance, with redactions as permitted by law. The Prop G calendar contains entries pertaining to the City Attorney's activities that generally are not privileged and must be disclosed in response to a request for the City Attorney's calendar. For the City Attorney, the function of the Prop G calendar is to record non-privileged meetings he has attended that pertain to his official duties.

This office will not provide another calendar maintained by the City Attorney's Office for the City Attorney that is in fact the basis for the public Prop G calendar. This other calendar contains private information about the City Attorney's personal activities; private phone numbers and addresses of others; identities of constituents who meet with the City Attorney to petition their elected representative; identities of whistleblowers or other persons complaining about violations of law; information acquired in confidence from others; information pertaining to pending investigations; and information protected by the attorney-client privilege or attorney work product privilege. In addition, the calendar contains entries for events not attended by the City Attorney.

These entries are protected from disclosure under Section 6254 (k) of the Public Records Act and a host of laws, including Cal. Const., Art. I §1 (privacy); Cal. Const., Art. I, §3 (right to petition elected representatives); Cal. Gov. Code § 6254 (c) (privacy) [see also Cal. Gov. Code § 6250, indicating that in adopting the Public Records Act, the Legislature was "mindful of the rights of individuals to privacy," and S.F. Admin Code § 67.1 (g), recognizing that "Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected"]; S.F. Admin Code Chapter 12M (privacy as to personal information); Cal. Evid. Code §1040 (official information privilege, protecting information acquired in confidence by the City); Cal. Evid. Code §1041 (identity of informant privilege, protecting identity of individuals who report violations of law); Cal. Evid. Code §954 (attorney-client privilege); Cal Code Civ. Procedure § 2018.30 (attorney work product privilege). Further, for purposes of maintaining the City Attorney's schedule, some information appears on the calendar that does not pertain to City business, and that information does not constitute a public record within the meaning of the Public Records Act or Sunshine Ordinance.

The Prop G calendar provides information as to time, date and subject matter of meetings attended by the City Attorney, without providing privileged information, such as the information described above. The Prop G calendar is essentially the equivalent of the other calendar properly redacted. Under these circumstances, disclosure of the Prop G calendar is all that the Public Records Act and Sunshine Ordinance require.

With respect to your request under Section 67.21 (c), this e-mail moots that request in that it discloses the existence of the City Attorney's calendar. There are no others. However, we do not agree that Section 67.21 (c) is apposite in this case. That provision is intended to assist requesters in finding out enough about categories of records in a department's possession so that the requester could then submit a request that reasonably identifies the record or category of records being sought. It states: "A custodian of a public record...shall, when requested to do so, provide in writing within seven days following receipt of a

request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity *to enable a requester to identify records in order to make a request under (b)*' (Emphasis added.) In this case, you have already made a request that encompasses calendars maintained by the City Attorney, and have made clear that you seek all such calendars.

Best,
ALEXIS THOMPSON
Deputy Press Secretary

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

(415) 554-4653 Direct
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(415) 554-4715 Facsimile
(415) 554-6770 TTY

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



DENNIS J. HERRERA
City Attorney

MARIAM MORLEY
Deputy City Attorney

DIRECT DIAL: (415) 554-4633
E-MAIL: mariam.morley@sfgov.org

January 15, 2008

Honorable Members, Sunshine Ordinance Task Force
c/o Frank Darby, Jr., Administrator
Office of the Clerk, Board of Supervisors
Room 244, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Re: Complaint No. 07094, Kimo Crossman v. City Attorney's Office

Dear Task Force Members:

Mr. Crossman is correct. Our Office inadvertently failed to respond to Mr. Crossman's request of November 21, 2007 for December 2007 calendars maintained by the City Attorney. Our confusion was caused by the fact that we had previously responded to similar requests from Mr. Crossman for the City Attorney's calendars.

Had we responded immediately to Mr. Crossman's November 21, 2007 request, we would have explained that San Francisco Administrative Code Section 67.29-5 provides that the "Prop. G" calendars maintained by City officials will be disclosed three business days subsequent to the calendar entry dates. Thus, we would have declined to disclose the City Attorney's December 2007 Prop G calendar prior to January 4, 2008. If Mr. Crossman is still interested in receiving a copy of the City Attorney's Prop G calendar for the month of December 2007, we would be happy to provide it to him.

To the extent that Mr. Crossman's November 21, 2007 request seeks disclosure of a calendar other than the City Attorney's Prop G calendar, we would have declined to provide such documents. Our reasons for this refusal are set forth in our response to Mr. Crossman's previous request for such a calendar. A copy of that response -- an August 23, 2007 email from Alexis Thompson of our office to Mr. Crossman -- is attached hereto. Please refer to our discussion of this issue in the third, fourth and fifth paragraphs of that email.

Very truly yours,

DENNIS J. HERRERA
City Attorney
Mariam Morley
Mariam Morley
Deputy City Attorney



Alexis Thompson /CTYATT

08/23/2007 12:12 PM

To kimo@webnetic.net

cc

bcc

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ALEXIS THOMPSON
Deputy Press Secretary

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