

Date: April 22, 2008

Item No. 8a

File No. 08019

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Complaint by: Crossman vs SOTF-A, COB, DTIS**
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

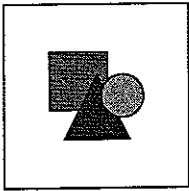
Completed by: Frank Darby

Date: April 16, 2008

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

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

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



DENNIS J. HERRERA
City Attorney

ERNEST H. LLORENTE
Deputy City Attorney

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

MEMORANDUM

APRIL 15, 2008

*KIMO CROSSMAN v SUNSHINE TASK FORCE ADMINISTRATOR,
THE CLERK OF THE BOARD OF SUPERVISORS AND THE
DEPARTMENT OF TELECOMMUNICATIONS AND INFORMATION
SERVICES (08019)*

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

On February 25, 2008, the Sunshine Posse sent an Immediate Disclosure Request to the Clerk of the Board of Supervisors and the SOTF Administrator for all e-mails sent to or from the SOTF account or paper only documents sent to or from SOTF from January 1, 2008 to January 25, 2008. On February 1, 2008, the Sunshine Posse sent another request extending the period from January 26, 2008 to February 1, 2008. When the Sunshine Posse learned that some of the e-mails were deleted, they requested that the deleted e-mails be restored and released. The request for deleted e-mails was forwarded to the Department of Telecommunications and Information Services.

COMPLAINANT FILES COMPLAINT:

On April 4, 2008, Kimo Crossman on behalf of the Sunshine Posse filed a complaint with the Sunshine Ordinance Task Force, alleging that the Clerk of the Board of Supervisors, Frank Darby, Administrator of the SOTF, and the Department of Telecommunications and Information Services violated the Sunshine Ordinance Sections 67.21-1 (a), 67.21-1(b), 67.25(d) and State Government Code Sections 6253(b), 6253(c) by failing to produce erased e-mails.

JURISDICTION

Based on the allegations of the complaint and the sections of the Ordinance stated below, the Task Force has jurisdiction to hear this matter. In addition the parties in this case do not contest jurisdiction.

THE RESPONDENT AGENCY REPLIES:

On April 10, 2008, Frank Darby, SOTF Administrator responded to the complaint by stating that the BOS and the SOTF office does not manage the e-mail backup tapes and that the responsibility resides with DTIS. The BOS and the SOTF Administrator requested the restoration of the deleted e-mails from DTIS who notified the BOS and SOTF Administrator that

Memorandum

the broadness of the request make restoration difficult, however the request is on the DTIS "to do" list.

APPLICABLE STATUTORY SECTIONS:

1. Sunshine Ordinance, San Francisco Administrative Code Section 67.1 addresses Findings and Purpose.
2. Sunshine Ordinance, San Francisco Administrative Code Section 67.21 addresses general requests for public documents including records in electronic format.
3. Sunshine Ordinance, San Francisco Administrative Code Section 67.21-1 addresses the policy regarding the use and purchase of computer systems.
4. Sunshine Ordinance, San Francisco Administrative Code Section. 67.26 deals with withholding kept to a minimum.
5. Sunshine Ordinance, San Francisco Administrative Code Section. 67.27 deals with justification for withholding.
6. California Public Records Act, Government Code Section 6253.9 deal with information in an electronic format.
7. California Public Records Act, Government Code Section 6253 deals with public records open to inspection; agency duties and time limits. California Public Records Act, Government Code Section 6255 deals with justification for withholding of records.
8. California Constitution, Article I, Section 3 addresses Assembly, petition, open meetings.

APPLICABLE CASE LAW:

none

ISSUES TO BE DETERMINED**A. Uncontested Facts:**

The parties agree to the following facts:

- The Sunshine Posse submitted a public records request to SOTF Administrator

Memorandum

Darby for e-mail records for certain periods.

- Mr. Darby produced e-mails and notified the Sunshine Posse that other e-mails had been deleted.
- The Sunshine Posse requested the restoration of the deleted e-mails and Mr. Darby forwarded the request to the DTIS.
- To date the deleted e-mails have not been provided.
- **B. Contested facts/ Facts in dispute:**

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

- Whether the Clerk of the BOS and/or the SOTF Administrator are in violation of the Ordinance or the State Public Records Act for the failure to produce the deleted e-mails?
- Whether DTIS has violated the Ordinance for its failure to produce the deleted e-mails?

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS;

none.

LEGAL ISSUES/LEGAL DETERMINATIONS;

- Were sections of the Sunshine Ordinance (Section 67.21), Brown Act, Public Records Act, and/or California Constitution Article I, Section three violated?
- Was there an exception to the Sunshine Ordinance, under State, Federal, or case law?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

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

Section 67.1 addresses Findings and Purpose

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

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

Memorandum

Section 67.21 addresses general requests for public documents.

This section provides:

- a.) Every person having custody of any public record or public information, as defined herein, ... shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.
- b.) A custodian of a public record shall as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.
- c.) A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.
...
- k.) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirement provided in this ordinance.
- l.) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for

Memorandum

information or to release information where the release of that information would violate a licensing agreement or copyright law.

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

This section provides:

- a) It is the policy of the City and County of San Francisco to utilize computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to member of the public under this section. To the extent that it is technologically and economically feasible, department that use computer systems to collect and store public records shall program and design the systems to ensure convenient, efficient, and economical public access to records and shall make public records easily accessible over public networks such as the Internet.
- b) Department purchasing new computer systems shall attempt to reach the following goals as a means to achieve lower costs to the public in connection with the public disclosure of records;
 - 1) Implementing a system in which exempt information is segregated or filed separately from otherwise disclosable information.
 - 2) Implementing a system that permits reproduction of electronic copies of records in a format that is generally recognized as an industry standard format.
 - 3) Implementing a system that permits making records available through the largest non-profit, non-proprietary public computer network, consistent with the requirement for security of information.

Section 67.26 provides:

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

Memorandum

Section 67.27 provides:

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

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

The California Constitution as Amended by Proposition 59 in 2004 provides for openness in government.

Article I Section 3 provides:

- a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely to consult for the common good.
- b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
- 2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.
- 3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.
- 4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that person may not be deprived of life, liberty, or property

Memorandum

without due process of law, or denied equal protection of the laws, as provided by Section 7.

5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committee, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions: nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

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

Section 6253 provides.

a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the records after deletion of the portions that are exempted by law.

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

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

Section 6253.9 provides:

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

Memorandum

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

- (1) The agency shall make the information available in any electronic format in which it holds the information.
- (2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in any electronic format.
 - b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:
 - (1) In order to comply with the provisions of subdivision a.), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.
 - (2) The request would require data compilation, extraction, or programming to produce the record.
 - c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.
 - d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.
 - e. Nothing in this section shall be construed to permit an agency to make information available only in electronic format.
 - f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.
 - g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

Section 6255 provides:

- a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the

Memorandum

particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

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



<complaints@sfgov.org>
04/04/2008 04:37 PM

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

History: This message has been forwarded.

Submitted on: 4/4/2008 4:37:37 PM

Department: COB, SOTF, DTIS

Contacted: SOTF Administrator

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: 67.21-1 (a), 67.21-1 (b), 6253 (b), 6253(c) which requires prompt response, 67.25 (d) failure to provide incrementally

Description: I am represnting the Sunshine Possee which asked for all emails for a certain time period including deleted ones. As of 4/3/08 the deleted ones have not been provided and there appears to be no desire to respond "promptly" as required under CPRA.

Hearing: Yes

Date: April 4, 2008

Name: Kimo Crossman

Address:

City:

Zip:

Phone:

Email: kimo@webnetic.net

Anonymous:



"Kimo Crossman"
<kimo@webnetic.net>
04/03/2008 10:04 PM

To "SOTF" <sotf@sfgov.org>, <dtis@sfgov.org>, "Ron
Vinson" <Ron.Vinson@sfgov.org>, "Angela Calvillo"
<Angela.Calvillo@sfgov.org>
cc "Allen Grossman" <grossman356@mac.com>,
<home@prosf.org>, <kimo@webnetic.net>
bcc
Subject Complaint against Clerk of the Board SOTF Admin and DTIS
- Deleted emails not provided

Submitted on: 4/3/08

Department: Clerk of the Board/SOTF Administrator/DTIS

Contacted: SOTF Administrator

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: 67.21-1 (a), 67.21-1 (b), 6253 (b), 6253(c) which requires prompt response,
67.25 (d) failure to provide incrementally

I am representing the Sunshine Possee which asked for all emails for a time period outlined below including deleted ones. As of 4/3/08 the deleted ones have not been provided and there appears (by the below message) to be no desire to respond "promptly" as required under CPRA and

On Tue, Apr 1, 2008 at 11:59 AM, SOTF <sotf@sfgov.org> wrote:
**I was informed that DTIS has it on their to do list and will notify me when
it is available.**

Frank Darby, Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
SOTF@SFGov.org
OFC: (415) 554-7724
FAX: (415) 554-7854

Complete a SOTF Customer Satisfaction Survey by clicking the link below.
http://www.sfgov.org/site/sunshine_form.asp?id=34307

"Sunshine Posse"
<sunshine.posse@g
mail.com> To
SOTF <sotf@sfgov.org>,
03/28/2008 06:25 kimo@webnetic.net, "home@prosf.org"
PM <home@prosf.org>, "Allen Grossman"
<grossman356@mac.com>
cc

Subject
Re: SOTF Response to 1/25/08 IDR

Mr. Darby, what is the status of this?

thank you.

On Thu, Mar 6, 2008 at 1:37 PM, SOTF <sotf@sfgov.org> wrote:
We've asked DTIS to retrieve all deleted e-mail for the time period that
you requested. Because the request is not specific they informed me that
it will take them time to retrieve. I am still awaiting the e-mails.

Frank Darby, Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
SOTF@SFGov.org
OFC: (415) 554-7724
FAX: (415) 554-7854

Complete a SOTF Customer Satisfaction Survey by clicking the link below.

http://www.sfgov.org/site/sunshine_form.asp?id=34307

"Sunshine Posse"
<sunshine.posse@gmail.com>
To
SOTF <sotf@sfgov.org>
03/02/2008 05:11 PM cc
Subject
Re: SOTF Response to 1/25/08 IDR

Also, what is the status of files/emails which have been deleted and must be retrieved from archive?

On Wed, Feb 13, 2008 at 3:33 AM, Sunshine Posse <sunshine.posse@gmail.com>

wrote:

Also, what is the status of files/emails which have been deleted and must be retrieve from archive?

On Feb 12, 2008 1:23 PM, SOTF <sotf@sfgov.org> wrote:
The following is in response to your e-mail below.

In accordance with the Public Records Act and the Sunshine Ordinance, this office has responded to your public records request, including providing all relevant code sections. We have sent you a total of 31 e-mails containing approximately 250 e-mails sent and received by this office, and agenda's, packets and minutes of all Task Force and committee meetings held

in January 2008 (122+mb). You were also informed that digital recordings for two of the meetings are available on CD (\$1), that 74 pages of meeting notes are available (\$7.40), and there are approximately 167 pages of communications that exist only on paper (\$16.70) that are available for pick up in the office of the Clerk of the Board.

We realize that you may not completely agree with some aspects of the departments response. This office tries to reasonably assist requestors access to public records, and has made a diligent effort to meet all of your requests. However, there is no requirement that we engage in ongoing dialogue with a requestor who may disagree with a department's response to a request or its handling of a request. To conserve the finite staff resources of the Clerk's Office and the Sunshine Ordinance Task Force and to remain able to perform the many public duties, this Office will limit our response to the extent the law requires.

Frank Darby, Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
SOTF@SFGov.org
OFC: (415) 554-7724
FAX: (415) 554-7854

Complete a SOTF Customer Satisfaction Survey by clicking the link below.

http://www.sfgov.org/site/sunshine_form.asp?id=34307

"Sunshine Posse"
<sunshine.posse@g
[mail.com](mailto:sunshine.posse@gmail.com)>

To

SOTF <sotf@sfgov.org>, "Allen
02/06/2008 08:09 Grossman" <grossman356@mac.com>,
PM "Wayne Lanier"

home@prosf.org
"
<w_lanier@pacbell.net>,
kimo@webnetic.net, "
<home@prosf.org>

cc

Subject

Re: SOTF Response to 1/25/08 IDR

Thank you.

We sent two requests asking that you coordinate with us before transmistting the document,

Why did you ignore those requests?

Please see the attached City Wide Website recently adopted by COIT in January which we believe will address the redaction of email addresses.

It

says if a citizen contacts the government by city website that the information provided including contact info is public record - therefore will not be redacted.

Your redaction of personal email addresses requires an express permissive exemption under Sunshine 67.26 A general statement of Right to Privacy is not an express permissive exemption. Redating for privacy also requires applicable facts, balancing tests to be applied for *each* redaction.

We did not and do not consent to paper copies of documents and will not agree to the 10 cent charge.

For Paper only documents we request that you provide them as scanned PDF

which is just the same as copying a document We all know it is just a different button on the same machine. Please see 67-21-1 which states that

it is city policy to distribute records on the internet and strongly encourages using technology to reduce cost of disclosure . And 67.26 disallows charging for staff time for responding to Public Records requests.

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

(a) It is the policy of the City and County of San Francisco to utilize computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this section.

To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall program and design these systems to ensure convenient, efficient, and economical public access to records and shall make public records (not limited to Electronic Records)easily accessible over public networks such as the Internet.

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

(3) Implementing a system that permits making records (not limited to Electronic Records) available through the largest non-profit, non-proprietary public computer network, consistent with the requirement for security of information.

67.26

The work of responding to a public-records request and preparing

documents
for disclosure shall be considered part of the regular work duties of
any
city employee, and no fee shall be charged to the requester to cover
the
personnel costs of responding to a records request.

For the digital audio again under 67.21 L, 67.21-1 and 6253.9 we
request
that it be either posted on the SOTF website, on an alternate city site
like the Library or even Archive.org or that it be send with the free
<http://www.sendthisfile.com/> site which has no file size limit. We
have
other ways the file can be sent if these do not work. Please note the
city
has already been sued for SFPL public records and provided them
ultimately
as FTP transfer protocol. Please provide the sizes of each file
seperately
so we can suggeste the easiest way to send it.

You have not addressed records that have been deleted that are on
archive -
either emails or voicemails or fax logs. Please address retrieve these
and
provide copies of all requests to retrieve such information.

on item 3, are you indicating that absolutly no visitor logs are kept
for
the SOTF? Previously Mr. Darby recorded visits and calls and in fact
we
believe this is a job requirement as well as a board of supervisors
requirement at budget time.

While Meeting packets have been provided, (thank you) we await the
actual
electronic emails and electronic documents that were originally sent
and
ultimately used to create the meeting packets.

Thank you again and we do want to work with you to limit the work
required
to respond to this request, we are open to suggestions.



"Kimo Crossman "
<kimo@webnetic.net>
04/10/2008 11:32 AM

"SOTF" <sotf@sfgov.org>, "Bruce Wolfe, MSW"
To <sotf@brucewolfe.net>, <Dougcoms@aol.com>, "Richard A.
Knee" <rak0408@earthlink.net>, <elc@lrolaw.com>
"Angela Calvillo" <Angela.Calvillo@sfgov.org>, "Chris
cc Vein" <Chris.Vein@sfgov.org>, "Ron Vinson"
<Ron.Vinson@sfgov.org>, "Barry Fraser"
bcc
Subject RE: SOTF-A Response: #08019_Kimo Crossman vs. COB,
SOTF-A, DTIS (Response for the file)

Clerk: Please add this to the file for this complaint

This matter only concerns access to the deleted emails, that has not been heard by the Taskforce. Frank Darby is the Records Information Manager for the Clerk of the Board and is paid over 100,000 a year in this position. If he can't retrieve the emails, there is something seriously wrong and his position should be eliminated.

Please note, the definition of Custodian of Records, includes records in one's custody *or* Control. No estimate has been provided as to when these records could be produced nor were the records printed to paper to archive them. The request for these records was on 1/25/08, yet none have been recovered – from remote storage which the ordinance and CPRA clearly provide for by the extension mechanism.

Kimo Crossman

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



Ron Vinson/DTIS/SFGOV
04/15/2008 03:28 PM

To Frank Darby/BOS/SFGOV@SFGOV
cc Barry Fraser/DTIS/SFGOV@SFGOV, Thomas
Long/CTYATT@CTYATT
bcc
Subject Response to deleted email Inquiry

Dear Mr. Darby,

Per your request during our phone discussion late last week, DTIS cannot comply with SOTF's request to provide actual deleted email messages. It can only provide departments with a user's mail file that may or may not contain deleted email messages. Restoration of files from backup media is time consuming and requires that staff identify the proper server where the deleted files were stored, locate the correct backup tape of that designated server (which may be located off site) and run the restore application. This application does not identify or locate any specific emails, but outputs a large data file, which is a snapshot of the user's mail file residing on the server at the time of the backup. Departments can review a copy of this data file and attempt to identify specific deleted emails within this data.

In addition, there is no guarantee that this raw data file will contain deleted email. User data backups occur once a day. Therefore, due to the timing of each backup, data files will not contain any email messages that were deleted before the backups occur. For the same reason, restoration requests that are very broad or that cover a period of many days or weeks make the restoration procedure significantly more complicated and time consuming, while further reducing the chance that the all deleted emails can be recovered.

Ron Vinson
Chief Administrative Officer
Deputy Director
DTIS
(415) 581-4003 - office
(415) 581-3970 - Fax

1 South Van Ness Avenue
2nd Floor
San Francisco, CA 94103
(415)



SOTF/SOTF/SFGOV
04/15/2008 03:56 PM

To SOTF/SOTF/SFGOV@S: JV
cc kimo@webnetic.net
bcc
Subject SOTF-A Response2: #08019_Kimo Crossman vs COB,
SOTF-A, DTIS

To All SOTF Members

Section 6252 (e) of the California Public Records Act defines a record as " ...any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Since deleted e-mail are not retained they do not meet the definition of a public record. Nevertheless in an attempt to be helpful and offer further assistance the Department asked the Department of Telecommunications and Information Services (DTIS) to restore deleted emails for the time frames requested.

Ron Vinson of DTIS informed me that DTIS cannot provide the Department with the actual deleted e-mail messages, but can only provide the user's mail file that may or may not contain deleted e-mail messages. Further, they indicated that restoring files from backup media does not guarantee that the raw data file will contain deleted e-mail.

Please note that the Department responded to the request from the Sunshine Posse by providing e-mails beginning January 1, 2008, through February 1, 2008. Although, its possible that some e-mails were deleted during that period, we don't know if recovery of deleted e-mails would result in any new e-mails that have not already been provided.

Frank Darby, Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
SOTF@SFGov.org
OFC: (415) 554-7724
FAX: (415) 554-7854

Complete a SOTF Customer Satisfaction Survey by clicking the link below.
http://www.sfgov.org/site/sunshine_form.asp?id=34307