

Date: May 27, 2008

Item No. 13

File No. 08013

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Order Of Determination Crossman v. SOTF-A
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Completed by: Frank Darby

Date: May 21, 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

DATE THE DECISION ISSUED

March 31, 2008

KIMO CROSSMAN v. SOTF ADMINISTRATOR (08013)

FACTS OF THE CASE

Kimo Crossman ("Crossman") made an Immediate Disclosure Request ("IDR") to Frank Darby, Sunshine Ordinance Task Force Administrator ("Administrator") for a copy of all e-mails sent and received by the Administrator from January 1, 2008 through February 1, 2008. The Administrator responded by providing copies of the records requested but redacting some personal e-mail addresses from the correspondence.

COMPLAINT FILED

On November 24, 2006, Crossman filed a complaint online and alleged that the Administrator impermissibly redacted e-mail addresses from the correspondence and forwarded the responsive e-mails in "bunches" rather than forwarding each in order to preserve the character of the original email.

HEARING ON THE COMPLAINT

On March 25, 2008 Complainant Kimo Crossman appeared before the Task Force and presented his claim. Respondent Agency was represented by Frank Darby, who presented the Agency's defense.

The issues in the case is whether the Agency violated Section(s) 67.1, 67.21, 67.26, 67.27 and 67.31 of the Ordinance and/or Sections 6253, 6253.9, and/or 6255 of the California Public Records Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented the Task Force finds the testimony of Kimo Crossman regarding the redaction of the e-mail addresses to be persuasive and finds that section 67.21 (a) to be applicable in this case. The Task Force does not find the testimony provided by the Agency persuasive to this case. The Task Force took no action with respect to the manner in which the e-mails were forwarded by the SOFT Administrator to Mr. Crossman.

ORDER OF DETERMINATION

Based on prior Orders of Determination where the Task Force found that e-mail addresses are, in the absence of particular circumstances showing that the submitter has a need for confidentiality (*i.e.*, a whistleblower, anonymous request) e-mail addresses are generally not exempt from disclosure under the Sunshine Ordinance. See, *e.g.* 07008 ordering release of e-mail addresses; see also *Holman v. Superior Court*, 31 Med. Law Reporter 1993, 2003 Cal. App. Unpub. Lexis 6512 (2003) (unpublished) (ordering release of email addresses contained in government records); *cf.* Cal. Govt. Code § 6254.3 (specifically exempting only home address and telephone numbers of state employees from disclosure under CPRA).

The Task Force finds the case law regarding protection of privacy cited by the Administrator to be factually inapposite and that there is, generally and except for limited factual circumstances indicated above, no reasonable expectation of privacy in e-mail addresses contained in governmental records.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated §67.21 (a) of the Sunshine Ordinance for failure to provide e-mail addresses. The agency shall release the e-mail addresses for the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on April 9, 2008.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 25, 2008, by the following vote: (Craven / Goldman)

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

Noes: Pilpel

Excused: Chu



Doug Comstock, Chair
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney
Kimo Crossman, Complainant
Frank Darby, SOTF Administrator



SOTF/SOTF/SFGOV
04/14/2008 02:07 PM

To kimo@webnetic.net
cc SOTF/SOTF/SFGOV@SFGOV
bcc
Subject Continuance Requested: #08013_Kimo Crossman vs
SOTF-A

Mr. Crossman,

The Department is reviewing it's current redaction practices for all of its divisions and is requesting that this matter be continued to the May 27, 2008, of the Task Force. Do you agree to a continuance?

Frank Darby, Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
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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



"Kimo Crossman"
<kimo@webnetic.net>
04/14/2008 05:42 PM

To "SOTF" <sotf@sfgov.org>
cc "Allen Grossman" <grossman356@mac.com>, "Angela Calvillo" <Angela.Calvillo@sfgov.org>
bcc
Subject RE: Continuance Requested: #08013_Kimo Crossman vs SOTF-A

I'm sorry but no I do not agree to a continuance on this. This matter has been discussed for many months - I should have never had to file a complaint in the first place. The Order of Determination has been issued - there is nothing more for the Clerk to research, either you and she comply or it's Official Misconduct as the Sunshine Ordinance makes very clear.

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

From: SOTF [mailto:sotf@sfgov.org]
Sent: Monday, April 14, 2008 2:08 PM
To: kimo@webnetic.net
Cc: SOTF
Subject: Continuance Requested: #08013_Kimo Crossman vs SOTF-A

Mr. Crossman,

The Department is reviewing it's current redaction practices for all of its divisions and is requesting that this matter be continued to the May 27, 2008, of the Task Force. Do you agree to a continuance?

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SOTF/SOTF/SFGOV
04/15/2008 03:52 PM

To SOTF/SOTF/SFGOV@SFGOV
cc kimo@webnetic.net
bcc
Subject Continuance Requested: #08013_Kimo Crossman vs
SOTF-A

To SOTF Members,

The Office of the Clerk of the Board is requesting a continuance of the hearing to consider the recommendation, from the Compliance and Amendments Committee, to refer the above titled complaint for further action. The office is reviewing it's current redaction practices for all of its divisions, which may affect our position to not disclose personal e-mail addresses. We ask that this matter be continued to the May 27, 2008, meeting of the Task Force.

Frank Darby, Administrator
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"Kimo Crossman"
<kimo@webnetic.net>
04/15/2008 09:12 PM

To "SOTF" <sotf@sfgov.org>
<Dougcoms@aol.com>, "Richard A. Knee"
cc <rak0408@earthlink.net>, <elc@lrolaw.com>, "allen
Grossman" <grossman356@mac.com>,
bcc
Subject RE: Continuance Requested: #08013_Kimo Crossman vs
SOTF-A

I do not agree to this continuance. This issue has been clearly addressed by SOTF in prior complaints. I have also had direct communications with the Clerk of the Board about this matter significantly in advance of this complaint - there has been ample time to research this issue the only options now are for the SOTF admin and Clerk to comply with the Order of Determination of the SOTF

Kimo Crossman

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

From: SOTF [mailto:sotf@sfgov.org]
Sent: Tuesday, April 15, 2008 3:53 PM
To: SOTF
Cc: kimo@webnetic.net
Subject: Continuance Requested: #08013_Kimo Crossman vs SOTF-A

To SOTF Members,

The Office of the Clerk of the Board is requesting a continuance of the hearing to consider the recommendation, from the Compliance and Amendments Committee, to refer the above titled complaint for further action. The office is reviewing it's current redaction practices for all of its divisions, which may affect our position to not disclose personal e-mail addresses. We ask that this matter be continued to the May 27, 2008, meeting of the Task Force.

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