

Date: July 22, 2008

Item No. 10a

File No. 08032

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Complaint by: Crossman vs City Attorney**
-
-
-
-
-
-
-
-
-
-

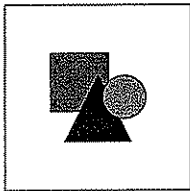
Completed by: Frank Darby

Date: July 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

July 14, 2008

KIMO CROSSMAN v. CITY ATTORNEY'S OFFICE (08032)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

On or about June 4, 2008, Kimo Crossman contacted Matt Dorsey, Public Information Officer for the City Attorney's Office ("CAO") and asked that the CAO provide Kimo Crossman with a "Word Version" of a record that he had in PDF format. The record is 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". Matt Dorsey responded and declined to provide the "Word Version". Matt Dorsey referred Kimo Crossman to the City Attorney's Office Website and to a particular letter that stated the CAO's position on the release of information in "Word Version".

COMPLAINANT FILES COMPLAINT

On June 6, 2008, Crossman filed a complaint with the Sunshine Ordinance Task Force ("Task Force"), alleging that the CAO violated Sections 67.21(L), 67.21-1, 67.26) and 67.27 of the Sunshine Ordinance and Sections 6253(b) and 6253.9 of the State Government Code by refusing to release the record in a "Word Version".

RESPONDENT REPLIES

Matt Dorsey in his reply to Kimo Crossman references a legal opinion by DCA Paul Zarefsky dated September 19, 2006 that was prepared in an earlier case of Crossman v. Gloria Young, Clerk of the Board of Supervisors. The issues of the earlier case are identical with the current case.

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.

Memorandum**APPLICABLE STATUTORY SECTIONS:**

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

APPLICABLE CASE LAW:

none

ISSUES TO BE DETERMINED**1. FACTUAL ISSUES****A. Uncontested Facts:**

The parties agree to the following facts:

- Crossman submitted a public records request to Matt Dorsey, Public Information Officer for the September 25, 2007 letter to the Board of Supervisors and Ethics Commission from the Mayor, transmitting written charges of official misconduct in MS Word format.
- Matt Dorsey declined to provide the document in MS Word format.

B. Contested facts/ Facts in dispute:

Memorandum

The Task Force must determine what facts are true.

i. Relevant facts in dispute:

Whether documents can be released in MS Word format without compromising the security or integrity of the original record?

2. QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

a.) What is the significance of metadata?

3. LEGAL ISSUES/ LEGAL DETERMINATIONS:

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

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS:

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 67.21 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** (emphasis added) following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.
- c.) A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.
- ...
- k.) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirement provided in this ordinance.

Memorandum

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

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

Section 67.21-1 provides:

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

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

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

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

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

Section 67.26 provides:

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.

Memorandum

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

Section 67.27 provides:

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

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

Section 67.31 provides:

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

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

Section 6253 provides.

Memorandum

- 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 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

Memorandum

and the record is one that is produced only at otherwise regularly scheduled intervals.

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

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

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

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

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

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

Section 6255 provides:

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

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



<complaints@sfgov.org>
06/06/2008 04:29 PM

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

History: This message has been forwarded.

Submitted on: 6/6/2008 4:29:10 PM

Department: City Attorney's Office

Contacted: PIO's Matt Dorsey and Alexis Thompson

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: 6253 (b), 67.21 (L), 67.21-1, 67.26, 67.27, 6253.9

Description: I requested the Word version of a PDF document at the City Attorney's office and they refuse to provide it. The PDF version strips all metadata in the Word document without showing the metadata redactions nor justifying them nor footnoting the exemption.

Hearing: Yes

Date: 6/4/08

Name: Kimo Crossman

Address:

City:

Zip:

Phone:

Email:

Anonymous:

Confidentiality_Requested: Yes



"Kimo Crossman"
<
06/04/2008 03:00 PM

To "SOTF" <sotf@sfgov.org>
"Matt Dorsey" <Matt.Dorsey@sfgov.org>, "Alexis
cc Thompson" <Alexis.Thompson@sfgov.org>, "Cityattorney"
<cityattorney@sfgov.org>
bcc
Subject SOTF Complaint - City Attorney revisal to provide document
in Word format

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

Submitted on: 6/4/2008

Department: City Attorney

Contacted: PIO's Matt Dorsey and Alexis Thompson

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: 6253 (b), 67.21 (L), 67.21-1, 67.26, 67.27, 6253.9

Description:

I requested the Word version of a PDF document at the City Attorney's office and they refuse to provide it. The PDF version strips all metadata in the Word document without showing the metadata redactions nor justifying them nor footnoting the exemption.

Hearing: Yes

Date: 6/4/08

Name: Kimo Crossman

Email:

From: Matt Dorsey [mailto:Matt.Dorsey@sfgov.org]

Sent: Wednesday, June 04, 2008 2:24 PM

To:

Subject: Response to your request

Dear Mr. Crossman,

You have asked that we provide you with the "Word version" of a record that you have in PDF. The record is 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."

We decline to provide this record in Word format. In a letter to the Sunshine Ordinance Task Force on September 19, 2006, which is on the City Attorney's Web site under City Attorney Opinions, this office explained the basis for its conclusion that neither the Public Records Act nor the Sunshine Ordinance requires City departments to provide a record in Word. We continue to adhere to that view.

Best,

MATT DORSEY

Public Information Officer

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/>