

Date: September 23, 2008

Item No. 6a  
File No. 08037

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Complaint by: Kimo Crossman v. Supervisor Peskin**
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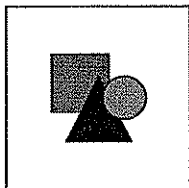
Completed by: Frank Darby

Date: September 17, 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  
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DIRECT DIAL: (415) 554-4236  
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**MEMORANDUM**

August 19, 2008

*KIMO CROSSMAN v. THE SUPERVISOR AARON PESKIN AND THE BOARD OF SUPERVISORS (08037)*

**COMPLAINT**

**THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:**

Complainant Kimo Crossman viewed the Board of Supervisors GAO Committee on 6/16/08 and saw that a contract agreement was amended at that time and forwarded on to the full board of Supervisors for review and action for hearing on 6/24/08. Kimo Crossman advised David Noyola of Supervisor Peskin's office that under section 67.24(a)(2) the ten day rule for public review of the draft agreement requires that the hearing for approval be set later than 6/24/08. Nevertheless, the contract was agendized for 6/24/08 and adopted by the BOS.

**THE COMPLAINANT FILES THE COMPLAINT:**

On July 8, 2008 Complainant Kimo Crossman filed a complaint against the Supervisor Peskin, President of the Board of Supervisors and the members of the Board of Supervisor for its alleged violation of section 67.24(a)(2) of the Sunshine Ordinance by its adoption of a contract agreement without providing 10 days for public review.

**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.

**APPLICABLE STATUTORY SECTIONS:**

- 1. Sunshine Ordinance § 67.24 addresses public information that must be disclosed.

**APPLICABLE CASE LAW:**

none

**ISSUES TO BE DETERMINED**

**Memorandum**

**1. FACTUAL ISSUES**

**A. Uncontested Facts:**

The parties agree to the following facts:

Complainant Kimo Crossman viewed the Board of Supervisors GAO Committee on 6/16/08 and saw that a contract agreement was amended at that time and forwarded on to the full board of Supervisors for review and action for hearing on 6/24/08.

**B. The Task Force must determine what facts are true.**

**i. Relevant facts in dispute: Whether the BOS violated the 10 day public inspection rule as stated in Section 67.24(a)(2) of the Sunshine Ordinance.**

**QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:**

1. How does the ten day rule apply in this case?

**2. LEGAL ISSUES/ LEGAL DETERMINATIONS:**

- **Were sections of the Sunshine Ordinance, Brown Act, and/or Public Records Act 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 67.24 (a)(2) addresses Public Information that must be disclosed.

This section provides:

(a) Drafts and Memoranda.

...

(2) Draft versions of an agreement being negotiated by representatives of the City with some other party need not be disclosed immediately upon creation but must be preserved and made available for public review for 10 days prior to the presentation of the agreement for approval by a policy body, unless the body finds that and articulates how the public interest would be unavoidably and substantially harmed by compliance with this 10 day rule, provided that policy body as used in this subdivision does not include committees. In the case of negotiations for a contract, lease or other business agreement in which an agency of the City is offering to provide facilities or services in direct competition with other public or private entities that are not required by law to make their competing proposals public or do not in fact make their proposals public, the policy body may postpone public access to the final draft agreement until it is presented to it for approval.



<complaints@sfgov.org>  
07/08/2008 10:13 AM

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

History

This message has been forwarded

Submitted on: 7/8/2008 10:13:02 AM

Department: Supervisor Peskin and full BOS

Contacted: David Noyola

Public\_Records\_Violation: Yes

Public\_Meeting\_Violation: No

Meeting\_Date:

Section(s)\_Violated: 67.24 (a) (2)

Description: A Contract agreement was amended in whole at BOS GAO on 6/16 and Adopted by BOS full board on 6/24/08. I notified the David Noyola of Supervisor Peskin's office that the ten day rule applied but they went ahead and submitted it and adopted it anyhow.

Hearing: Yes

Pre-Hearing: No

Date: 7/8/08

Name: Kimo Crossman

Address:

City:

Zip:

Phone:

Email:

Anonymous:

Confidentiality\_Requested: Yes



"Kimo Crossman"

07/07/2008 06:45 PM

To "SOTF" <sotf@sfgov.org>

cc

bcc

Subject FW: SOTF Complaint - TEN Day rule violated Supervisor Peskin & BOS

Chris:

I need a number for this one

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**From:** Kimo Crossman [mailto: ]  
**Sent:** Thursday, June 26, 2008 9:54 PM  
**To:** 'David Noyola'; aaron.peskin@sfgov.org  
**Cc:** 'Board of Supervisors'; 'Angela Calvillo'  
**Subject:** SOTF Complaint - TEN Day rule violated Supervisor Peskin & BOS  
**Importance:** High

*SOTF Clerk:*

*Please include the below email chain, images and attachments in the file for this complaint. Since there is no requirement for form completion for SOTF – this is my complaint in it's entirety. There is no requirement to confirm a completed SOTF form.*

Submitted on: 6/26/08

Department: Supervisor Aaron Peskin & full BOS

Contacted: David Noyola

Public\_Records\_Violation: Yes

Public\_Meeting\_Violation: No

Meeting\_Date:

Section(s)\_Violated: 67.24 (a) (2)

Description:

A Contract agreement was amended in whole at BOS GAO on 6/16 and Adopted by BOS full board on 6/24/08. I notified the David Noyola of Supervisor Peskin's office that the ten day rule applied but they went ahead and submitted it and adopted it anyhow.

*67.24 (a)(2) Draft versions of an agreement being negotiated by representatives of the City with some other party need not be disclosed immediately upon creation **but must be preserved and made available for public review for 10 days prior to the presentation of the agreement for approval by a policy body.***

Hearing: Yes

Date: 6/26/08

Name: Kimo Crossman

Email: \_\_\_\_\_

Details below:

*This is the Real-Time-Captioning text from the 6/16/08 BOS GAO Committee meeting:*

Next item please. The Clerk: 7. Resolution approving the fifth amendment to the agreement between serco management systems, inc. And the city and county of san francisco, through the san francisco municipal transportation agency.

**Chair Peskin:** I thought you were going to put this back out to bid we are putting this back out to bid. We had come in front of you last year at the same time asking for an extension knowing we were going to do pilots.

This project, because serco owns the back end, we want to extend this contract for two years concurrently with sf park. Additionally we have outstanding debt service on the meters that doesnt expire for another two years so we felt it made good business sense to do this concurrently and work on the rfp and put it out in two year time when the debt service

**Chair Peskin:** and you agree with the recommendation that the option to transfer coin counting not be included in the agreement were okay with that.

We would prefer it to be included, but however were okay with that.

**Chair Peskin:** *so how do you propose one of two ways you can amend the agreement. I can continue this item, and you can amend the agreement, or I can send this to the full board, and you can show me a copy of the amended agreement, deleting that section, prior to it being heard by the board.*

*We prefer the latter.*

**Chair Peskin:** *okay. So we can send it to the board, but then, prior to the 24th day of June, you have to show us an amended agreement. Thats... Chair Peskin: and youre okay with the half a million reduction yes. Chair Peskin: and youre okay with an amendment to the resolution requiring you to report on the rfp process to the board absolutely.*

Were fine with that.

**Chair Peskin:** all right. Ms. Campbell. As youve already stated, we did make four proposals for

amendments to this resolution, reducing the amount by a 500,000, deleting the coin counting function, which we considered to be a new and unnecessary function without a competitive bid, and also to ensure that there really is a timely rfp process for the reporting to the board of supervisors on that rfp process. Other than that, we do consider this to be a policy matter.

**Chair Peskin:** any public comment on this issue seeing none, public comment is closed.

Supervisor ammiano, with the half a million reduction, the pending amendment to the agreement, the amendment to the resolution deleting the option to the transfer of the coin counting functions, and the reporting requirements, can we send this forward as amended to the full board  
Supervisor Ammiano: sure. Is there a budget that shows the value of this work

**Chair Peskin:** yes, there is.

Supervisor Ammiano: and this isnt contracting out any kind of city work, right

**Chair Peskin:** that has not already been previously contracted out. On page 24, the budget analyst report, table 2, there is a breakdown of the estimates.

Supervisor Ammiano: all right. What about I think the concern is that the mta should be reporting on the rfp process, because it seems like they theyre using the sole source contracting a lot. Let me think about it for this is not going to be a committee report, right

**Chair Peskin:** no.

Supervisor Ammiano: good. Because I might consider an amendment about the recording of the rfp process. Let me think about it. You know, this, with the other one

**Chair Peskin:** so you want to send it without recommendation

Supervisor Ammiano: why dont we do that, sure.

**Chair Peskin:** as previously amended, we will send this item to the full board without recommendation. Madam Clerk, next item please

**Sent:** Thursday, June 26, 2008 12:45 AM  
**FROM:** 'David Noyola'  
**Subject:** DAVID?: question about 10 day rule from 6/16 GAO

I think it's the same as when we make non-substantive changes to an item and are not required to re-notice it, and can vote on it that same day.

David Noyola  
Office of Supervisor Aaron Peskin  
City Hall, Room 256



San Francisco, CA 94102  
t. 415.554.7451  
f. 415.554.7454

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**From:** Kimo Crossman [mailto: \_\_\_\_\_ ]  
**Sent:** Tuesday, June 24, 2008 11:54 PM  
**To:** 'David Noyola'  
**Subject:** RE: DAVID: question about 10 day rule from 6/16 GAO  
**Importance:** High

David,

Following up on our discussion:

Looking at this:

<http://www.sfgov.org/site/uploadedfiles/bdsupvrs/bosagendas/materials/080581.pdf>

Which was an Amendment of The Whole on 6/16/08 of an Agreement.

How can it be legally adopted by BOS earlier than ten days as it was today on 6/24/08?

This is not a Notice issue. A new agreement cannot be adopted for ten days.

Talking about notice, I warned you of this issue as well.

What am I missing here?

1 [Approval of Sixth Amendment to Agreement with Serco Inc. for parking meter collection and  
2 management services, to extend the term by two years and increase the contract amount by  
3 \$10,000,000.]

4 Resolution approving the Sixth Amendment to the Agreement between Serco  
5 Management Systems, Inc. and the City and County of San Francisco, through the San  
6 Francisco Municipal Transportation Agency.

7  
8 WHEREAS, On May 13, 2002, the Board of Supervisors adopted Resolution No. 305-  
9 02, approving the Agreement between the City and County of San Francisco and Serco  
10 Management Services, Inc. ("Agreement"), dated December 14, 2001, a five-year contract for  
11 parking meter collection and management services, for an amount not to exceed  
12 \$50,000,000; and,

13 WHEREAS, Under the Agreement, the San Francisco Municipal Transportation  
14 Agency ("SFMTA") has replaced approximately 23,000 mechanical meters with modern  
15 electronic single and multi-space meters, updated the means to track parking trends, and  
16 developed alternatives to coin payments for meter usage; and,

17 WHEREAS, On May 22, 2007, the Board of Supervisors adopted Resolution No. 277-  
18 07, approving the Fourth Amendment to the Serco Agreement, which extended the contract  
19 term for a period of one year, to June 3, 2008, and increased the contract amount not to  
20 exceed \$51,000,000; and,

21 On April 15, 2008, the SFMTA Board of Directors adopted Resolution No. 08-067,  
22 approving the Sixth Amendment to the Agreement; copies of the Resolution and the Sixth  
23 Amendment are on file with the Clerk of the Board of Supervisors in File  
24 No. 080581; and,

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WHEREAS, The SFMTA has commended the Sixth Amendment to the Agreement to the Board of Supervisors for its review and approval; and,

WHEREAS, The SFMTA has agreed to present to the Board of Supervisors prior to June 24, 2008 an amended agreement with Serco, Inc., deleting the option to transfer the SFMTA's coin counting functions to Serco; and,

WHEREAS, The SFMTA has agreed to report to the Board of Supervisors on the RFP process to award a new contract effective July 1, 2010 for the SFMTA's parking management program twice per year, in December 2008, June 2009, and December 2009; now, therefore,  
be it

RESOLVED, That Board of Supervisors approves the proposed Sixth Amendment to the Agreement with Serco Inc., to extend the term of the Agreement for a period of two years, Agreement to expire June 3, 2010 and to increase the contract amount not to exceed ~~\$61,000,000~~ \$60,500,000.

In the May 16, 2007 Budget and Finance Committee meeting, the members of the Committee discussed the need for the MTA to issue a Request for Proposal (RFP)

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<sup>1</sup> Translink is an inter-modal automated transit fare card system under the direction of the Metropolitan Transportation Commission.

**BOARD OF SUPERVISORS**  
**BUDGET ANALYST**

259

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Memo to Government Audit and Oversight Committee  
June 16, 2008 Government Audit and Oversight Committee Meeting

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for the subject Agreement. As a result, the Budget and Finance Committee recommended and the Board of Supervisors approved a Fourth Amendment, extending the Agreement for one year rather than three years, from June 4, 2007 to June 3, 2008, and increasing the agreement not-to-exceed amount by \$1,000,000, from \$50,000,000 to \$51,000,000 (File 07-0545).

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

From: David Noyola [mailto:David.Noyola@sfgov.org]  
Sent: Wednesday, June 18, 2008 11:34 AM  
To: Kimo Crossman  
Subject: Re: DAVID: question about 10 day rule from 6/16 GAO

Hi Kimo,

It's my understanding that if the changes are within the scope of the original notice, the contract is not subjected to a new 10-day hold.

Hope you're well,

David Noyola  
Office of Supervisor Aaron Peskin  
City Hall, Room 256  
San Francisco, CA 94102  
t. 415.554.7451  
f. 415.554.7454

"Kimo Crossman"

< \_\_\_\_\_ >  
- >

To

<david.noyola@sfgov.org>

06/17/2008 09:53  
PM

cc

Subject

DAVID: question about 10 day rule  
from 6/16 GAO

Dear David

I hope this finds your well.

I was watching the GAO Committee today from 6/16 and there was a discussion about two MTA agreements - one was an amendment to an existing agreement — making it a new agreement- that were going to be adopted with some changes (listed below) at the 6/24 BOS meeting

Supervisor Peskin spoke with staff at the meeting and said something about needing to see the revised agreement before 6/24 (the next full BOS meeting). I did not catch the whole discussion but it appeared to me that changes were going to be made before that meeting.

If that is the case, then I wonder if the ten day rule may come into play here and the revised items cannot be adopted at BOS on 6/24.

Thanks for checking this and I apologize if I misunderstood something.

Sunshine Admin Code: 67.24

(2) Draft versions of an agreement being negotiated by representatives of the City with some other party need not be disclosed immediately upon creation but must be preserved and made available for public review for 10 days prior to the presentation of the agreement for approval by a policy body, unless the body finds that and articulates how the public interest would be unavoidably and substantially harmed by compliance with this 10 day rule, provided that policy body as used in this subdivision does not include committees. In the case of negotiations for a contract, lease or

other business agreement in which an agency of the City is offering to provide facilities or services in direct competition with other public or private entities that are not required by law to make their competing proposals public or do not in fact make their proposals public, the policy body may postpone public access to the final draft agreement until it is presented to it for approval.

These items:

6 080 [Approval of Agreement between the City and County of San Francisco and Serco, Inc. for Administrative Services in Support of the SFpark Project, for a contract term of two years and an

Resolution approving the Agreement between the City and County of San Francisco and Serco, Inc. for Administrative Services in Support of the SFpark Project. (Municipal Transportation Agency)

(Fiscal Impact.)

5/6/08, RECEIVED AND ASSIGNED to Government Audit and Oversight Committee.

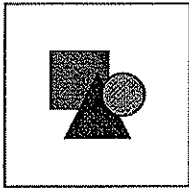
7 080 [Approval of Fifth Amendment to Agreement with Serco Inc. . 581 for parking meter collection and management services, to extend the term by two years and increase the contract amount by

Resolution approving the Fifth Amendment to the Agreement

between Serco Management Systems, Inc. and the City and County of San Francisco, through the San Francisco Municipal Transportation Agency. (Municipal Transportation Agency)

(Fiscal Impact.)

4/28/08, RECEIVED AND ASSIGNED to Government Audit and Oversight Committee.



DENNIS J. HERRERA  
City Attorney

ERNEST H. LLORENTE  
Deputy City Attorney

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

## MEMORANDUM

**September 12, 2008**

*ALLEN GROSSMAN v. CITY ATTORNEY'S OFFICE (08039)*

### COMPLAINT

#### THE COMPLAINANT ALLEGES THE FOLLOWING FACTS:

On May 28, 2008, , Allen Grossman submitted a public records request to Deputy City Attorney Rosa Sanchez for copies of all public records pertaining to a letter originally dated February 26, 2007, written by Deputy City Attorney Paul Zarefsky to the Task Force members, including 1) an exact copy of the Zarefsky letter in the form given to the Task Force member at the meeting; 2) memoranda, e-mails or other communications to, from or among Ms. Sanchez and/or any one or more Deputy City Attorneys or any other persons in the City Attorney's Office or the Task Force Administrator or any other person; and 3) drafts of the Zarefsky letter and all communications between Mr. Zarefsky and/or any other Deputy City Attorneys with respect t the drafts.

Allen Grossman stated that the City Attorney's Office responded to his request as follows: To category 1) by providing a copy of the Zaresfsky letter. To category 2) by stating: "this office has records responsive to your request " for memoranda, e-mails or other communications to, from or among Ms. Sanchez and/or any one or more Deputy City Attorneys or any other persons in the City Attorney's Office or the Task Force Administrator or any other person "but declines to produce them based on the attorney work product doctrine". To category 3) by stating: "we have located a draft of the Zarefsky letter and decline to produce it based on the attorney work product doctrine" and there were no "communications between Mr. Zarefsky and and/or any other Deputy City Attorneys with respect to the drafts".

#### COMPLAINANT FILES COMPLAINT

On July 30, 2008, Grossman filed a complaint online and alleged that the CAO violated Sections 67.21(b) of the Sunshine Ordinance and Section 6253(b) of the California Public Records Act ("CPRA") by its alleged failure to provide the requested documents