Date: Dec. 2, 2008

Item No. 8
File No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- ☒ **Administrators Report**
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

Completed by: Chris Rustom **Date:** Nov. 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

MEMORANDUM

Date: November 21, 2008

To: Sunshine Ordinance Task Force

From: Chris Rustom

Subject: Administrator's Report

1. Requests from community persons:
   - From October 22, 2008, to November 21, 2008, the Task Force's office responded to approximately 185 calls/e-mails/office visits from individuals requesting information regarding the Sunshine Ordinance, or to mediate request for records.

2. 2008 Complaint and Potential Complaint logs

3. Referral Log

4. Communications Received Log

5. Letters from Ethics Commission
   - #07057_Jeff Ente v Supervisor Aaron Peskin (dismissed)
   - #07077_Allen Grossman v District Attorney (dismissed)
   - #07080 (a, b, c)_Dan Boreen v Fire Department (dismissed)
   - #07087 Allen Grossman v Mayor's Office (dismissed)
   - #07094_Kimo Crossman v City Attorney (dismissed)
   - #07096_Kimo Crossman v Mayor's Office (dismissed)
   - #08004, 08005, 08007 Kimo Crossman v City Attorney (dismissed)
   - #08006 Kimo Crossman v City Attorney (dismissed)

6. Orders of Determination
   - #08039_Allen Grossman v City Attorney
   - #08046_Karl Beale v Library and Rec & Park Department
   - #08047_Peter Witt v Taxi Commission

Complaints 2008

Date Received	Complainant	Department/Respondent	Status
1/3/2008	Kimo Crossman (08001)	District Attorney	Complaint Committee 2/12/08; Task Force 2/26/08 (No formal action taken)
1/7/2008	Hank Wilson (08002)	Public Health - HPPC	Complaint Committee 2/12/08 (Withdrawn: 2/6/08)
1/10/2008	Christian Holmer (08003)	Mayor's Office	Complaint Committee 2/12/08; Task Force 2/26/08 (Withdrawn: 2/22/08)
1/10/2008	Kimo Crossman (08004, 08005, 08007)	City Attorney	Complaint Committee 2/12/08; Task Force 2/26/08 contd.; 3/25/08 violation 67.21 (a), 67.21 (l), 67.24 (b) (l) (iii); CAC 4/9/08: Referred to Task Force; Task Force 4/22/08: Referred to Ethics (sent:5/13/08 dismissed 11/5/08)
1/10/2008	Kimo Crossman (08005, 08004, 08007)	City Attorney	Complaint Committee 2/12/08; Task Force 2/26/08; 3/25/08 heard with 08004; CAC 4/9/08: Referred to Task Force; Task Force 4/22/08: Referred to Ethics (sent:5/13/08 dismissed 11/5/08)
1/10/2008	Kimo Crossman (08006)	City Attorney	Complaint Committee 2/12/08; Task Force 2/26/08 contd; 3/25/08 violation of 67.26, 67.21 (l), 67.24 (b) (1) (iii); CAC 4/9/08: Referred to Task Force; Task Force 4/22/08: Referred to Ethics (sent:5/13/08 dismissed 11/5/08)
1/10/2008	Kimo Crossman (08007, 08004, 08005)	City Attorney	Complaint Committee 2/12/08; Task Force 2/26/08; 3/25/08 heard with 08004; CAC 4/9/08: Referred to Task Force; Task Force 4/22/08: Referred to Ethics (sent:5/13/08 dismissed 11/5/08)
1/14/2008	Stephen Worsley (08008)	Recreation and Park	Complaint Committee 2/12/08; Task Force 2/26/08 (No formal action taken)
2/9/2008	Patrick Monett-Shaw (08009)	Board of Supervisors	Complaint Committee 3/11/08 (Withdrawn: 2/26/08)
2/11/2008	Patrick Monett-Shaw (08010)	Dept. of Health	Task Force 3/25/08 (Withdrawn 3/15/08)
2/20/2008	David Waggoner (08011)	Ethics Commission	Complaint Committee 3/11/08; Task Force 3/25/08 (No formal action taken)
3/2/2008	Kimo Crossman (08012)	Clerk of th Board, SOTF Administrator	Task Force 3/25/08 (Withdrawn 3/14/08)
3/2/2008	Kimo Crossman (08013)	SOTF Administrator	Task Force 3/25/08 (Violation 67.21 (a)); CAC 4/9/08: Referred to Task Force; Task Force 4/22/08; 5/27/08 Referred to BOS (sent 06/13/08)
3/4/2008	Jason Berckart (08014)	Human Rights Commission???	Pending Clarification from Complainant
3/4/2008	Deniz Bolbol (08015)	SF Zoological Society	Task Force 3/25/08 (Violation 67.25)

Complaints 2008

3/7/2008	Anonymous (08016)	SF Arts Commission	Task Force 4/22/08 (Withdrawn 3/20/08)
3/17/2008	Kimo Crossman (08017)	Clerk of the Board, SOTF Administrator	Task Force 4/22/08 (No Violation)
3/17/2008	Kimo Crossman (08018)	Clerk of the Board, SOTF Administrator	Task Force 4/22/08 [Violation 67.21-1 (a)]; CAC 5/14/08 (No formal action taken)
4/8/2008	Kimo Crossman (08019)	Clerk of the Board, SOTF Administrator, DTIS	Task Force 4/22/08 (No Violation)
4/8/2008	Peter Witt (08020)	SF Taxi Commission	Task Force 4/22/08; 5/27/08 (Violation §67.15; 67.16)
5/2/2008	Kimo Crossman (08021)	City Attorney's Office	Task Force 5/27/08 (No violation)
5/2/2008	Kimo Crossman (08022)	Clerk of the Board	Task Force 5/27/08, 6/24/08; 7/22/08 [No action taken]
5/20/2008	Anonymous Tenants (08023)	Planning Department	Task Force 6/24/08; 7/22/08 [Violated 67.21 (b) & (c)]; CAC 8/13/08 9/10/08 (No action taken)
5/20/2008	Michael Addario (08024)	Arts Commission	Complaint 6/10/08, Task Force 6/24/08; 7/22/08 [Violated 67.5]; CAC 8/13/08; 9/10/08 (No Action Taken)
5/21/2008	Kimo Crossman (08025)	City Attorney	Task Force 6/24/08; 7/22/08 Withdrawn 6/27/08
5/21/2008	Kimo Crossman (08026)	City Attorney	Task Force 6/24/08; 7/22/08 Withdrawn 6/27/08
5/21/2008	Kimo Crossman (08027)	Mayor's Office of Criminal Justice	Task Force 6/24/08; 7/22/08; Withdrawn 8/21/08
5/21/2008	Kimo Crossman (08028)	City Attorney	Task Force 6/24/08; 7/22/08 Withdrawn 6/27/08
5/29/2008	Barry Taranto (08029)	Taxi Commission	Task Force 6/24/08; 7/22/08 [67.15 (c)]; CAC 8/13/08 No action taken
5/29/2008	Kimo Crossman (08030)	COB, SOTF Administrator	Complaint 8/12/08 (Withdrawn 8/11/08)
6/3/2008	Kimo Crossman (08031)	Ethics Commission	Task Force 7/22/08 [Violated 67.21 (1)]; CAC 8/13/08; 9/10/08; Task Force 9/23/08 Ltr sent to BOS, Ethics
6/4/2008	Kimo Crossman (08032)	City Attorney	Task Force 7/22/08 [Violated 67.21 (1), CPRA 6253.9 (a) & (b)]; CAC 8/13/08; TF 8/26/08; 9/23/08 Ltr sent to BOS, CAO
6/25/2008	Charles Pitts (08033)	Human Services	Complaint 9/9/08; Task Force 9/23/08 [No violation]
6/27/2008	Tomas Picarello (08034)	Supervisor Jake McGoldrick	Task Force 7/22/08; 8/26/08, 9/23/08 [No violation]
6/30/2008	Neils Welin (08035)	Municipal Transportation Agency	Complaint 8/12/08 (Withdrawn 7/14/08)

Complaints 2008

6/25/2008	Juan De Anza (08036)	Public Health	Complaint 8/12/08 (No Jurisdiction); Task Force 8/26/08 (Appeal Denied)
7/8/2008	Kimo Crossman (08037)	Supervisor Peskin	Task Force 8/26/08; 9/23/08 Violated 67.21 (e) & 67.24 (a) (ii), EOT 10/9/08 No action taken
7/28/2008	Kin Tso (08038)	Animal Control and Welfare Commission	Task Force 8/26/08, CAC 9/10/08 (No Action Taken)
7/30/2008	Allen Grossman (08039)	City Attorney	Task Force 8/26/08; 9/23/08, 10/28/08 No violation
30-Jul	Eula Walters (08040)	Recreation and Park Commission	Complaint 9/9/08; Task Force 9/23/08 [No violation] Appealed 10/28/08 No action taken
8/1/2008	Kimo Crossman (08041)	DTIS, SFGTV	Task Force 8/26/08, Withdrawn 8/19/08
8/1/2008	Kimo Crossman (08042)	DTIS, SFGTV, City Administrator, Media Services, SOTF-A, COB	Complaint 9/9/08; Task Force 9/23/08, 10/28/08 (1st cont.), 11/25/08 (2nd cont.) Withdrawn 11/10/08
8/5/2008	Charles Pitts (08043)	SFPD	Task Force 8/26/08 (Withdrawn 8/11/08)
8/19/2008	Brian Browne (08044)	Building Inspection	Task Force 9/23/08, 10/28/08 Withdrawn 10/17/08
8/26/2008	Barry Taranto (08045)	MTA	Complaint Committee 10/14/08 Contd 11/12/08 Task Force 12/2/08
8/26/2008	Karl Beale (08046)	Rec & Park, Library	Complaint Committee 10/14/08 Task Force 10/28/08 No violation
8/26/2008	Peter Witt (08047)	Taxi Commission	Task Force 10/28/08, CAC 11/12/08, No action taken
8/26/2008	Anonymous Tenants (08048)	Building Inspection	Task Force 10/28/08, Withdrawn 10/27/08
9/3/2008	John Caldera (08049)	Veteran Affairs Commission	Complaint Committee 10/14/08, No action taken
10/17/2008	Charles Pitts (08050)	MOCJ	Task Force 11/25/08, rescheduled to 12/2/08
11/3/2008	Paul V. Horcher (08051)	Planning Department	Complaint 12/09/08
11/13/2008	Mr. Alvin (08052)	Arts Commission	Complaint 12/09/08
11/19/2008	Peter Witt (08053)	Taxi Commission	Complaint 01/13/09

Potential Complaints 2008

Date	Name	Concerns	Status
2/6/2008	Navy Keo	San Jose Police Department allegedly failed to redact personal inforamtion.	Referred to San Jose City Clerk/Clerk of the Board
2/12/2008	sswang168@aol.com	Juvenile Probation Commission possibly not providing 72 hours notice.	Doesn't want a hearing.
4/1/2008	Christian Holmer	Mayor's Office allegedly not providing daily calendar	Complaint form sent: No Response
5/21/2008	Kimo Crossman	City Attorney	Withdrawn
5/21/2008	Kimo Crossman	District Attorney	Withdrawn
5/21/2008	Kimo Crossman	Controller	Withdrawn
6/13/2008	Peter Warfield	Library for untimely; not rolling, incomplete	Pending
6/13/2008	Peter Warfield	Library for untimely, incomplete, unhelpful	Pending
8/11/2008	Richard Midgen	BOS for Arlington Residence contract	Sent him to Human Services
8/20/2008	SF Bar Assoc	evictions in public housing	No jurisdiction
8/21/2008	Vince Courtney	Rec & Park over golf report	No response
9/2/2008	William B Gray	Police Dept (Mission Station)	No response
10/20/2008	Tamera Barak	Police Dept not providing records.	Mediated
11/19/2008	Peter Witt	Taxi Commission	Follow up to previous complaint

Referral Log 2005-2008

Date Referred/Sent	Complainant	Department/Respondent	Status
1/25/2005 (Sent 1/31/05)	Cheryl Brinkman, Pat Christensen, Sue Vaughan (#05004)	Golden Gate Park Concourse Authority	Referred to Ethics Commission (EC#06-052104 Dismissed: 9/12/06)
9/26/2006 (Sent 11/3/06)	Robert Planthold (#06004)	Municipal Transportation Agency	Referred to District Attorney (No Response); Referral to Ethics Commission (EC#10-061108 Dismissed: 4/10/07)
4/24/2007 (Sent 5/17/07)	Kimo Crossman (07002-A & B)	Mayor's Office	Referred to Ethics Commission (EC#01-70528 dismissed 7/24/08 & 04-070801 dismissed 7/24/08) Referred to District Attorney (No Response) Referred to Attorney General [6/28/07 AG will not intervene: referred to EC]
6/26/2007 (Sent 7/30/2007)	Kimo Crossman (07009)	Mayor's Office	Referred to Board of Supervisors (No Response) Referred to Ethics Commission (EC#05-070808 dismissed 7/24/08) Referred to District Attorney (8/22/07 awaiting result of EC) Referred to Attorney General (No Response)
5/22/2007 (Sent 6/5/07)	Kimo Crossman (07011)	Sheriff's	Referred to the Board of Supervisors (No Response)
5/22/2007 (Sent 7/30/07)	Kimo Crossman (07023, 06025 & 06027)	Telecommunications and Information Services	Referred to Ethics Commission; (EC#02-070801 Dismissed: 1/16/08)
1/8/2008 (Sent 2/27/08)	Myrna Lim (07056)	Ethics Commission	Referred to Attorney General: Sent 2/27/08) [3/21/08 AG: Will not investigate...local matter.]
1/8/2008 (Sent 1/31/08)	Jeff Ente (07057)	Supervisor Aaron Peskin	Referred to Ethics Commission [04-080204] Dismissed 10/30/08. Referred to Attorney General [3/24/08 AG: Will not investigate, referred to Ethics]
1/8/2008 (Sent 2/27/08)	Library Users Assoc. by Exec. Dir Peter Warfield (07061 & 07062)	Library	Referred to Attorney General [3/21/08 AG: Will not investigate... local matter.]
1/8/2008 (Sent 1/31/08)	Allen Grossman (07077)	District Attorney	Referred to Ethics Commission (EC#05-080204) Referred to Attorney General 3/24/08 AG: AG will not investigate. Referred to Ethics.EC dismissed 10/30/08
3/25/2008 (Sent 4/24/08)	Dan Boreen (07080-A, B, & C)	Fire Department	Referred to Ethics Commission (EC#13-080424) Dismissed 10/30/08

Referral Log 2005-2008

3/25/2008 (Sent 4/24/08)	Allen Grossman (07087)	Mayor's Office	Referred to Ethics Commission (EC# 15-080424) Dismissed 10/30/08
3/25/2008 (Sent 4/24/08)	Kimo Crossman (07094)	City Attorney	Referred to Ethics Commission (EC#14-080424) Dismissed 11/05/08)
4/22/2008 (Sent 5/13/08)	Kimo Crossman (07096)	Mayor's Office	Referred to Ethics Commission (EC#17-080513) Dismissed 10/31/08
4/22/2008 (Sent 5/13/08)	Kimo Crossman (08004, 08005, 08007)	City Attorney	Referred to Ethics Commission (EC#18-080513) Dismissed 11/05/08)
4/22/2008 (Sent 5/13/08)	Kimo Crossman (08006)	City Attorney	Referred to Ethics Commission (EC#19-080513) Dismissed 11/05/08)
5/27/2008 (Sent 6/13/08)	Kimo Crossman (08013)	SOTF-A	Referred to Board of Supervisors
9/23/2008 (Sent 10/6/2008)	Kimo Crossman (08031)	Ethics Commission	Referred to Board of Supervisors
9/23/2008 (Sent 10/7/2008)	Kimo Crossman (08032)	City Attorney's Office	Referred to Board of Supervisors

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

CONFIDENTIAL

Sent via Interoffice Mail

October 30, 2008

Ms. Erica Craven, Vice-Chair
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Re: Ethics Complaint No. 04-080204

Dear Vice-Chair Craven:

Pursuant to Section V.A.3. of the San Francisco Ethics Commission's Regulations for Investigations and Enforcement Proceedings ("the Regulations"), the Ethics Commission ("the Commission") conducted an investigation into the above-referenced complaint referred by the Sunshine Ordinance Task Force on February 4, 2008, regarding alleged official misconduct by Supervisor Aaron Peskin ("Respondent").

Mr. Ente made two disclosure requests to Respondent. Respondent responded to the first request within three days and responded to the Immediate Disclosure Request within one day. Respondent responded a third time five days later, explaining that a search had produced no additional records beyond those already provided to Mr. Ente, and Mr. Ente expressed his appreciation to Respondent. Mr. Ente provided no basis for his ensuing suggestions that additional documentation may exist.

Since Respondent fully responded to Mr. Ente's Sunshine Ordinance request, staff determined that Respondent did not violate sections 67.21, 67.29-1, and 67.29-7 of the Ordinance. Although Respondent did not fully comply with section 67.21(e) of the Ordinance due to his failure to send a representative from his office to all of the Task Force meetings held regarding Mr. Ente's request, Respondent sent a representative to two of the meetings to explain his position. Respondent's failure to send a representative to every meeting does not meet the standard of willful failure to comply with the Ordinance.

The Commission has determined that there is insufficient evidence that a violation of State or City law, relating to campaign finance, lobbying, campaign consulting, conflicts of interest or governmental ethics occurred. For this reason, the Ethics

Commission has dismissed this matter. Pursuant to the Regulations, no further action is contemplated in regard to this complaint.

If you have any questions regarding this matter, please call Catherine Argumedo, staff investigator, at (415) 252-3100.

Sincerely,

John St. Croix
Executive Director

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

CONFIDENTIAL

Sent via Interoffice Mail

October 30, 2008

Ms. Erica Craven, Vice-Chair
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Re: Ethics Complaint No. 05-080204

Dear Vice-Chair Craven:

Pursuant to Section V.A.3. of the San Francisco Ethics Commission's Regulations for Investigations and Enforcement Proceedings, the Ethics Commission conducted an investigation into the above-referenced complaint referred by the Sunshine Ordinance Task Force on January 21, 2008, regarding alleged official misconduct by The Office of the District Attorney.

Staff's investigation determined that the District Attorney's Office properly invoked a justification for withholding provided for under Sunshine Ordinance sections 67.27 and 67.24 (d)(1-6). In this particular instance, I want to express my concern that the Sunshine Ordinance Task Force has made an Order of Determination that it knows – or should know from the evidence presented – that compliance would create a security breach in the District Attorney's Office. The Ethics Commission has taken pains to verify this during its investigation. The SOTF, in ignoring this critical element of information presented to them, has acted irresponsibly.

As a result, the Commission concluded that there was no willful failure to discharge any duties imposed by the Sunshine Ordinance as is required to find a violation (sec. 67.34). For this reason, the Ethics Commission has dismissed this matter. Pursuant to the Regulations, no further action is contemplated in regard to this complaint.

If you have any questions regarding this matter, please call Garrett Chatfield, staff investigator, at (415) 252-3100.

Sincerely,

John St. Croix
Executive Director

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

CONFIDENTIAL

Sent via Interoffice Mail

October 30, 2008

Ms. Erica Craven, Vice-Chair
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Re: Ethics Complaint No. 13-080424

Dear Ms. Craven:

Pursuant to Section V.A.3. of the San Francisco Ethics Commission's Regulations for Investigations and Enforcement Proceedings, the Ethics Commission conducted an investigation into the above-referenced complaint referred by the Sunshine Ordinance Task Force on April 24, 2008, regarding alleged official misconduct by Fire Chief Joanne Hayes-White through her representative, Rhab Boughn.

Staff's investigation determined that no unjustified withholding or redaction occurred in connection with the request for records. Mr. Boughn relied on information and advice provided by the deputy city attorney assigned to the Fire Department, and as a result, the Commission concluded that there was no willful failure to discharge any duties imposed by the Sunshine Ordinance as is required to find a violation under section 67.34. For this reason, the Ethics Commission has dismissed this matter. Pursuant to the Regulations, no further action is contemplated in regard to this complaint.

If you have any questions regarding this matter, please call Garrett Chatfield, staff investigator, at (415) 252-3100.

Sincerely,

John St. Croix
Executive Director

25 Van Ness Avenue, Suite 220 • San Francisco, CA 94102-6053• Phone (415) 252-3100• Fax (415) 252-3112
E-Mail Address: ethics_commission@sfgov.org Web site: http://sfgov.org/ethics

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

CONFIDENTIAL

Sent via Interoffice Mail

October 30, 2008

Ms. Erica Craven, Vice-Chair
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Re: Ethics Complaint No. 15-080424

Dear Ms. Craven:

Pursuant to Section V.A.3. of the San Francisco Ethics Commission's Regulations for Investigations and Enforcement Proceedings, the Ethics Commission conducted an investigation into the above-referenced complaint referred by the Sunshine Ordinance Task Force on April 24, 2008, regarding alleged official misconduct by the Mayor's Office through its representative Joe Arellano.

Staff's investigation determined that the Mayor's Office made good faith efforts to comply with the records request, and that any untimely response occurred without the intent to withhold without justification. As a result, the Commission concluded that there was no willful failure to discharge any duties imposed by the Sunshine Ordinance as is required to find a violation under section 67.34. For this reason, the Ethics Commission has dismissed this matter. Pursuant to the Regulations, no further action is contemplated in regard to this complaint.

If you have any questions regarding this matter, please call Garrett Chatfield, staff investigator, at (415) 252-3100.

Sincerely,

John St. Croix
Executive Director

25 Van Ness Avenue, Suite 220 • San Francisco, CA 94102-6053• Phone (415) 252-3100• Fax (415) 252-3112
E-Mail Address: ethics_commission@sfgov.org Web site: http://sfgov.org/ethics

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

Sent via interoffice mail

CONFIDENTIAL

November 5, 2008

Frank Darby Jr., Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place Room 244
San Francisco, CA 94102-4689

Re: Ethics Complaint No. 14-080424

Dear Mr. Darby:

Pursuant to Section V.A.3. of the San Francisco Ethics Commission's Regulations for Investigations and Enforcement Proceedings ("the Regulations"), the Ethics Commission conducted an investigation into the above-referenced complaint, referred by the Sunshine Ordinance Task Force ("SOTF").

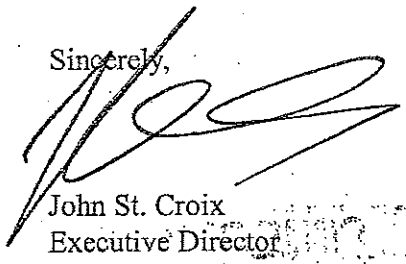
After conducting the investigation, the Ethics Commission finds that the Respondents did not willfully violate any section of the Sunshine Ordinance. Although Respondents inadvertently failed to respond within the required timeframe to inform the requester that there were no documents responsive to his request, the requested department head calendar was not yet available at the time the request was made.

Further, the SOTF erroneously concluded that the Sunshine Ordinance requires disclosure of calendars created and maintained in addition to those created under section 67.29-5. The City Attorney has determined that disclosure is required only of those non-privileged meetings that pertain to official duties, available after the calendar entry date. As legal counsel to the City and County of San Francisco, the City Attorney is a higher authority than the SOTF when it comes to determining the legal duties of City departments, boards and commissions; the Ethics Commission recognizes the City Attorney's conclusion in this matter.

For these reasons, the Ethics Commission has dismissed this complaint. Pursuant to the Regulations, no further action is contemplated in regard to this complaint. If you have any questions, please contact enforcement staff at (415) 252-3100.

25 Van Ness Avenue, Suite 220 • San Francisco, CA 94102-6053• Phone (415) 252-3100• Fax (415) 252-3112
E-Mail Address: ethics_commission@sfgov.org Web site: http://sfgov.org/ethics

Sincerely,



John St. Croix
Executive Director

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

CONFIDENTIAL

Sent via Interoffice Mail

October 31, 2008

Ms. Erica Craven, Vice-Chair
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Re: Ethics Complaint No. 17-080513

Dear Ms. Craven:

Pursuant to Section V.A.3. of the San Francisco Ethics Commission's Regulations for Investigations and Enforcement Proceedings, the Ethics Commission conducted an investigation into the above-referenced complaint referred by the Sunshine Ordinance Task Force on May 13 2008, regarding alleged official misconduct by the Mayor's Office

Staff's investigation determined that no unjustified withholding or failure to provide the Mayor's daily calendar occurred as the records request and complaint were filed prior to the date the Mayor's Office was required to respond. As a result, the Commission concluded that there was no willful failure to discharge any duties imposed by the Sunshine Ordinance as is required to find a violation under section 67.34. For this reason, the Ethics Commission has dismissed this matter. Pursuant to the Regulations, no further action is contemplated in regard to this complaint.

If you have any questions regarding this matter, please call Garrett Chatfield, staff investigator, at (415) 252-3100.

Sincerely,

John St. Croix
Executive Director

25 Van Ness Avenue, Suite 220 • San Francisco, CA 94102-6053• Phone (415) 252-3100• Fax (415) 252-3112
E-Mail Address: ethics_commission@sfgov.org Web site: http://sfgov.org/ethics

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

Sent via interoffice mail

CONFIDENTIAL

November 5, 2008

Frank Darby Jr., Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place Room 244
San Francisco, CA 94102-4689

Re: Ethics Complaint Nos. 18-080513 & 19-080513

Dear Mr. Darby:

Pursuant to Section V.A.3. of the San Francisco Ethics Commission's Regulations for Investigations and Enforcement Proceedings ("the Regulations"), the Ethics Commission conducted an investigation into the above-referenced complaints, referred by the Sunshine Ordinance Task Force ("SOTF").

In the circumstances of these two complaints, staff investigation determined that the respondent indeed made substantial disclosures to the request for records. In some instances, however, the respondent withheld documentation pursuant to state law relating to privilege (*see* Government Code section 6254(k).)

The SOTF has interpreted Sunshine Ordinance sections 67.21(i) and 67.24(b)(1)(iii) to supersede applicable state privilege doctrines. However, the City Attorney has made an opposing interpretation that there are circumstances where the San Francisco Charter and state law may conflict with the Sunshine Ordinance and allow for protection of attorney work-product and recognition of the attorney-client privilege. In facing such conflict of opinion, the Ethics Commission is on record as holding that the Charter always preempts the Sunshine Ordinance.

Further, when this is a conflict of opinion between the SOTF and the City Attorney's Office, the Ethics Commission recognizes the City Attorney as the lead attorney for the City and County of San Francisco. Having been elected by the people of San Francisco to that position, the City Attorney is a higher authority than the SOTF, whose members are appointed.

In this case, the respondents have timely provided records except those for which they have legal justification in withholding. Therefore, there is no misconduct, willful or otherwise; and no violation exists in this matter. The SOTF was in error in finding

otherwise.

For these reasons, the Ethics Commission has dismissed these complaints. Pursuant to the Regulations, no further action is contemplated in regard to these complaints. If you have any questions, please contact enforcement staff at (415) 252-3100.

Sincerely,

John St. Croix
Executive Director

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
November 10, 2008

DATE THE DECISION ISSUED
October 28, 2008

ALLEN GROSSMAN v. OFFICE OF THE CITY ATTORNEY (08039)

FACTS OF THE CASE

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, 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 to 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".

COMPLAINT FILED

On July 30, 2008, Allen 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

HEARING ON THE COMPLAINT

On October 28, 2008, Allen Grossman appeared before the Task force and stated that the requested draft documents and communications were subject to disclosure because, even if they were attorney work-product, they must be released under 67.24(b)(ii) and (b)(iii).

ORDER OF DETERMINATION

Respondent Virginia Dario Elizondo of the City Attorney's Office said the communications and drafts pertaining to the letter are protected attorney work-product because they are the thoughts, impressions and thoughts of attorneys and, therefore, are exempt from disclosure.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented, the Task Force finds that communications and drafts pertaining to the letter issued by the City Attorney's Office are protected attorney work product and not subject to disclosure under section 67.24(b)(ii) because they were work-product materials when created and not subject to disclosure under section 67.24(b)(iii) because the drafts and communications did not reflect the final opinion or analysis of the City Attorney's office.

DECISION AND ORDER OF DETERMINATION

The Task Force after much extended discussion found that the work-product doctrine applied in this case and the withheld documents were exempt from disclosure

This Order of Determination was adopted by the Sunshine Ordinance Task Force on October 28, 2008, by the following vote: (Goldman / Knoebber)

Ayes: Craven, Knee, Cauthen, Washburn, Knoebber, Chu, Chan, Goldman
Noes: Johnson, Williams

Kristin Murphy Chu, Chair
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney
Allen Grossman, Complainant
Virginia Dario Elizondo, Deputy City Attorney

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
November 10, 2008

DATE THE DECISION ISSUED
October 28, 2008

KARL BEALE v. PUBLIC LIBRARY, RECREATION & PARK DEPARTMENT (08046)

FACTS OF THE CASE

The Recreation and Park Department and the Public Library scheduled a joint master planning workshop for the Joe DiMaggio North Beach Playground and the North Beach Branch Library for August 18, 2008, at 7:00 p.m. The meeting included a joint presentation from Recreation and Park and the Library and was noticed by posting on the Library's website and by mailing and posting information flyers.

COMPLAINT FILED

On August 26, 2008, Karle Beale filed a complaint against Recreation and Park and the Library. Karle Beale alleged that then two departments failed to notify the public of the August 18, 2008, meeting on Recreation and Park 's website. Karle Beale also alleged that Recreation and Park and the Library failed to provide adequate disclosure of the agenda and purpose of the meeting in the public notification, specifically, the contemplated closure of a local street.

HEARING ON THE COMPLAINT

On October 28, 2008, Complainant Karl Beale appeared before the Task Force and presented his complaint that said the closure of Mason Street in North Beach was predertemined and not publicized enough for public comment and participation. Respondent Agencies were represented by Branch Library Improvement Program member Mindy Linetzky who said the community forums were not public meetings and public hearings, and that the events were well publicized and well attended.

The issue in the case is whether the Agencies violated Section 67.7-1 of the Sunshine Ordinance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented, the Task Force finds that the Recreation and Parks Department and the San Francisco Public Library provided adequate notice of the business of the community workshop which was of concern to the community.

ORDER OF DETERMINATION

DECISION AND ORDER OF DETERMINATION

The Task Force finds that even though Section 67.7-1 applies in this case there was no violation because the noticing was sufficient and final decisions regarding the closure of Mason Street were not made at the gatherings.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on October 28, 2008, by the following vote: (Goldman / Knee)

Ayes: Craven, Knee, Washburn, Johnson, Chu, Chan, Goldman

Noes: Williams

Recused: Cauthen, Knoebber

Kristin Murphy Chu, Chair
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney
Karl Beale, Complainant
Mindy Linetzky, Branch Library Improvement Program
Olive Gong, Recreation and Park Department
Sue A Blackman, Public Library

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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
November 6, 2008

DATE THE DECISION ISSUED
October 28, 2008

PETER WITT v. TAXI COMMISSION (08047)

FACTS OF THE CASE

Complainant Peter Witt, who regularly attends the Taxi Commission meetings, claims that the minutes of the August 12, 2008, meeting did not include the 150-word statements that were submitted during the public comment session of the meeting.

COMPLAINT FILED

On August 26, 2008, Peter Witt filed a complaint describing the violation as listed above.

HEARING ON THE COMPLAINT

On October 28, 2008, Complainant Peter Witt appeared before the Task Force and presented his complaint. A representative of the Taxi Commission was not present, but Jordanna Thigpen, the commission's executive director, provided a written response to the complaint admitting that the Commission does not include any 150-word statements in their minutes in order to conserve resources.

The issue in the case is whether the commission violated Sunshine Ordinance section 67.16 which provides that: "Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Peter Witt's allegations that the Taxi Commission did not include his 150-word statement in the minutes of the meeting was confirmed by the letter of Commission Executive Director Jordanna Thigpen. Ms. Thigpen stated that due to budget problems, the Commission does not include the 150-word statements submitted by public comment speakers in their minutes. This policy violates section 67.16 of the Sunshine Ordinance because the Ordinance requires that the 150-word statement be included in the minutes.

ORDER OF DETERMINATION

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Section 67.16 of the Sunshine Ordinance. The Commission must include any 150-word written summaries submitted by persons speaking during a public comment period in their meeting minutes. A representative of the Commission is to appear before the Compliance and Amendments Committee on November 12, 2008.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on October 28, 2008, by the following vote: (Craven / Cauthen)

Ayes: Craven, Knee, Cauthen, Washburn, Knoebber, Johnson, Chu, Goldman, Williams
Excused: Chan

Kristin Murphy Chu, Chair
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney
Peter Witt, Complainant
Jordanna Thigpen, Respondent