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Sent via U.S. Postal Service

January 16, 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. 02-070801

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 ("the Commission") conducted an investigation into the above-referenced complaint referred by the Sunshine Ordinance Task Force on August 1, 2007, regarding alleged official misconduct by the Department of Telecommunications and Information Services ("DTIS").

On October 5, 2007, DTIS responded to an immediate disclosure request by Kimo Crossman, stating:

In accordance with 67.24 (e)(3) of the Administrative Code, DTIS is currently posting on its website...all documents exchanged between the City and EarthLink that relate to the positions of the parties or, if those records do not provide a meaningful representation of the parties' respective positions, a written summary of the respective positions. Section 67.24 (e)(3) states an exception to Section 67.24 (e)(1) which does not require records of communications between persons seeking contracts and City departments to be disclosed until after a contract has been awarded...

Section 67.24 (e)(3) of the Sunshine Ordinance is not an "exception" to disclosure but rather a provision requiring disclosure. Similarly, the section concerns disclosures to be made during ongoing contract negotiations; it does not discuss disclosures to be made "after a contract has been awarded."

Nonetheless, any substantive features of contract negotiations between DTIS and Earthlink have been posted on the DTIS website. Any communication that did not reflect a meaningful representation of the parties' respective positions was also

summarized on the website pursuant to section 67.24(e)(3)(iii). DTIS fully reviewed the requests and sought continued legal advice from an assigned Deputy City Attorney.

While it is true that DTIS misquoted a section of the Sunshine Ordinance, it otherwise responded in a lawful fashion. Therefore, it did not willfully fail to discharge any duties imposed by the Sunshine Ordinance and, as a result, the Commission has dismissed the 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 Paul Solis, staff investigator at (415) 252-3100.

Sincerely,



John St. Croix
Executive Director