

# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

Date: January 21, 2015

PAUL A. RENNE  
VICE-CHAIRPERSON

To: Members, Ethics Commission

BRETT ANDREWS  
COMMISSIONER

From: Jesse Mainardi, Deputy Executive Director *JM*

BEVERLY HAYON  
COMMISSIONER

Re: **Show Cause Hearing – Ethics Complaint 01-140107**

PETER KEANE  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

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A Show Cause Hearing in the matter referenced above is scheduled to occur during the next regular Ethics Commission meeting at 5:30 PM on Monday, January 26, 2015, in Room 400 in City Hall. The hearing concerns a referral letter and an Order of Determination (“Order”) delivered by the Sunshine Ordinance Task Force (“Task Force”) to the Ethics Commission on November 21, 2013 regarding a complaint Allen Grossman filed against John St. Croix, Executive Director of the Ethics Commission. The referral was made pursuant to section 67.30(c) of the Sunshine Ordinance and named Mr. St. Croix as the Respondent. This matter was previously continued pending the resolution of related litigation, as set forth below.

### Background

According to the Order, Allen Grossman filed a complaint with the Task Force on November 19, 2012 against the Respondent and alleged that the Respondent failed to fully respond to his public records request dated October 3, 2012. The Complainant alleged violations of public records laws, specifically including Sunshine Ordinance sections 67.21(b), 67.27(a)&(b), and 67.24(b)(1)(i)&(iii). The Task Force heard the matter on June 5, 2013 and found Sunshine Ordinance section 67.21(b) and 67.24(b)(1) to be applicable to this case. The Task Force found that the requested records “are disclosable” and that Respondent violated section 67.21(b) for failure to provide the records within ten days following receipt of a request and section 67.24(b)(1) for withholding records subject to disclosure.

The Order was issued on June 24, 2013 and Respondent was ordered to release the records and appear before the Compliance and Amendments Committee on August 20, 2013. The Compliance and Amendments Committee heard the matter on August 20, 2013 and referred the matter back to the Task Force.

On September 4, 2013, the Task Force heard the matter again. According to the referral letter, the Task Force moved to find Respondent in violation of the Sunshine Ordinance and voted to refer the complaint to the Board of Supervisors and the Ethics

Commission for “violating Sections 67.21(b), 67.27(a)(b) [sic], and 67.24(b)(1) (i)&(iii).” On January 27, 2014, the Board of Supervisors notified the Ethics Commission that it had closed this matter after taking no action.

On January 8, 2014, Respondent requested a continuance as the referral alleged violations of the Sunshine Ordinance that were also before the Court of Appeal of the State of California, First Appellate District (appeal from the Superior Court of California, Case # CPF-13-513221), in litigation originally initiated by the Complainant. Chairperson Hayon granted the request for a continuance on January 10, 2014. The Court of Appeal issued its decision on the matter on July 28, 2014 in favor of the Respondent, and the Supreme Court of California denied Complainant’s Petition for Review on November 12, 2014. Due to notice requirements and the cancellation of the Ethics Commission’s regular meeting in December 2014, the January 2015 regular meeting of the Ethics Commission is the first opportunity following the Supreme Court’s denial to schedule this hearing.

#### Hearing Procedures and Scheduling

This matter will be heard under Chapter Two of the Ethics Commission Regulations for Handling Violations of the Sunshine Ordinance (“Regulations”). This matter is scheduled to be heard at a Show Cause Hearing during the next regular Ethics Commission meeting at **5:30 PM on Monday, January 26, 2015**, in Room 400 in City Hall.

According to Chapter Two of the Regulations, the Respondent bears the burden to show that he or she did not violate the Sunshine Ordinance. (*See* Regulations, Chapter Two, § II.B.) The Commission is required to deliberate on this matter in public and public comment will be allowed at the hearing. (*See* Regulations, Chapter Two, § II.D.) The votes of at least three Commissioners are required to make a finding that a Respondent has met his or her burden and has not committed a violation of the Sunshine Ordinance. The finding must be supported by findings of fact and conclusions of law and must be based on the entire record of the proceedings. (*See* Regulations, Chapter Two, § II.D.)

Neither the Respondent nor the Complainant is required to attend the hearing. However, if either party fails to appear, and the Commission did not grant the party a continuance or reschedule the matter under Chapter Four, section I.E, then the Commission may make a decision in the party’s absence. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. Here, neither party has requested a continuance.

The Respondent and the Complainant may each speak on his or her own behalf at the hearing, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal. Unless otherwise decided by the Commission, formal rules of evidence do not apply to the hearing.

Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Any documents provided must be provided to the opposing party and shall be delivered to the Commission no later than five business days prior to the scheduled hearing. Here, Complainant submitted documents to the Commission on January 14, 2015; Respondent submitted documents to the Commission on January 16, 2015.

Copies of all of the documents received from the Task Force regarding this matter and both parties' written submissions have been attached to this memorandum; a copy of the Regulations is also attached.

**Argumedo, Catherine (ETH)**

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**From:** Allen GROSSMAN <grossman356@mac.com>  
**Sent:** Wednesday, January 14, 2015 8:38 AM  
**To:** Argumedo, Catherine (ETH)  
**Cc:** Mainardi, Jesse (ETH)  
**Subject:** Re: Ethics Commission SHOW CAUSE HEARING on January 26, 2015  
**Attachments:** ShowCause- Memo 1-15-2010.pdf; ATT00001.htm

Ms. Argumedo,

Attached please find my Memorandum (dated January 15, 2015) to the Commissioners with reference to the scheduled show cause hearing. Please deliver a copy of the Memorandum to each of the Commissioners and to Mr. St. Croix.

Thank You,

Allen Grossman



MEMORANDUM

TO: San Francisco Ethics Commissioners,  
Benjamin Hur, Esq. (Chair),  
Paul A. Renne, Esq. (Vice-Chair),  
Brett Andrews,  
Beverly Hayon and  
Peter Keane, Esq.

FROM: Allen Grossman

DATED: January 15, 2015

RE: Ethics Commission Show Cause Hearing, January 26, 2015

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In November 2013 the Sunshine Ordinance Task Force ("Task Force") Order of Determination ("Order") against the Commission's Executive Director John St. Croix ("Mr. St. Croix") was referred to the Ethics Commission ("Commission") for enforcement. The Order was issued on my complaint that Mr. St. Croix's refusal to disclose certain communications with the City Attorney's Office violated the San Francisco Sunshine Ordinance ("Sunshine Ordinance"). On Monday, January 26, 2015, there will be a Show Cause Hearing (the "Hearing") whether to enforce the Order.

There are a number of related issues necessarily involved in the Hearing that must be addressed and resolved before the Commission hears the enforcement issue. These issues are:

(1) The Commission's Conflicts of Interest

The first: When the Commission sits as a quasi-judicial tribunal under its own promulgated Regulations deciding whether the Task Force's Order should be enforced, the Commission is in fact judging whether the Commission itself violated the Sunshine Ordinance provisions identified in the Order, because it has a direct conflict of interest. That conflict exists because the Commission is responsible for all the actions of the Respondent, Mr. St. Croix, under the Charter Appendix Section C3.699-11, which states that the Commission has "... *full charge and control of its office, to be responsible for its proper administration*, subject to the budgetary and fiscal provisions of the charter."

The second: Moreover, even without the Charter provision, the Commission has an obvious conflict if it were to decide whether or not to enforce the Task Force's Order against the Executive Director whom it appointed and whose actions before the Task Force the Commission never authorized.

The third: In September 2013, I filed a Sunshine Ordinance §67.34 "willful violation" complaint (the "§67.34 Complaint") with the Commission based on the same facts as the Task Force's referral and Order, except under the Commission's own Regulations the procedure requires Mr. St. Croix to investigate that §67.34 Complaint and make a recommendation to the Commission. The Commission could not act on his recommendation nor could one expect that any of his staff act to do so in place of his or her boss, Mr. St. Croix, for obvious reasons.

(2) The Attorney-Client Privilege and Waiver Issues

The attorney-client privilege protects the confidentiality of communications between an attorney and that attorney's client. Here the "client" is the Commission itself because the "privileged" communications related to its proposed draft Regulations governing the enforcement of Task Force referrals and §67.34 complaints. The privilege is not an absolute prohibition on disclosure; it is a privilege that can be waived. The Commission could have expressly waived it with respect to any or all the withheld records. However, the Commission was never given that opportunity by Mr. St. Croix, who kept the Commission in the dark about the dispute regarding the withheld records. He easily could have notified the Commission of that right by properly agendaizing it at a public meeting.

In any case, such a submission to the Commission is not needed here, because, even if the statutory provision was unenforceable, the Commission had already waived the privilege with respect to those communications between the City Attorney and the Commission when it adopted its Bylaws. The relevant Bylaws are:

Bylaw Article I, Section 3, which provides in part that the "*Commission shall comply with all applicable laws, including, but not limited to, the San Francisco Charter, San Francisco Sunshine Ordinance (Administrative Code sections 67.01 et seq.), the Ralph M. Brown Act (Government Code sections 54950 et seq.)*" and

Bylaw Article II - 2) which provides that the Commission will "*actively enforce all ethics laws and rules, including campaign finance and open government laws*". (Emphasis added.)

In view of that waiver, there is no need to conduct the Hearing. The Commission should direct Mr. St. Croix to disclose the withheld records without further delay.

(3) Mr. St. Croix's Usurpation of the Commission's Legal Responsibilities

As of today, there is no accessible public record disclosing that the Commission authorized Mr. St. Croix to assert and defend a claim of the attorney-client privilege on behalf of the Commission at any time in response to (a) my records request, (b) before the Task Force, (c) in the Superior Court, (d) by filing a Mandamus Petition on its behalf in the Court of Appeal, or (e) opposing my Petition to the Supreme Court. Those "authorizations" were "actions" under Brown Act Section 54952.2(b)(1):

"A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body."

The whole idea behind open public meetings is "deliberation." The public is entitled to the best thinking of a group of individuals with full information, comments from the public, and open discourse.

In fact, from the time that my records request was first submitted in October 2012, through the Commission's meeting of May 28, 2014, when Mr. St. Croix agendaized a "Discussion and possible action regarding pending litigation as defendant, Grossman v. John St. Croix, Executive Director, and San Francisco Ethics Commission ... Possible Closed Session," it appears that the Commission had not been "officially" advised of my original October 2012 request, any of the three Task Force

hearings, the Task Force Referral, my Superior Court petition, the Commission's defense of that petition, the Commission's mandamus petition in the Court of Appeal, or, for that matter, my §67.34 Complaint filed directly with the Commission. That agenda item was continued to the Commission's June 23, 2014 meeting. According to the Commission's minutes there was no action authorized in that closed session. Mr. St. Croix's failures to seek multiple authorizations from the Commission for his many actions in its name violated several provisions of the Brown Act and the Sunshine Ordinance. In other words, he ignored the statutory mandated requirements to circumvent those two public access laws.

As noted previously, under the Charter Appendix section C3.699-11, among its other duties and responsibilities the Commission has "... *full charge and control of its office, to be responsible for its proper administration*, subject to the budgetary and fiscal provisions of the charter." Thus, the Commission is fully responsible for Mr. St. Croix's unauthorized actions and violations of the Brown Act and the Sunshine Ordinance. To reward him by holding the Hearing would protect him from any discipline or penalty for his actions.

(4) Where Does the Commission Go from Here?

The Commission cannot disavow two of its own Bylaws - Article I, Section 3 and Article II - 2) - either impliedly or directly, without a public meeting. For that reason instead of holding the Hearing at its January 26, 2015 meeting, the Commission should agendize and hold a hearing with public comment before either affirming or rejecting those two Bylaws. If it rejects those two Bylaws, it can then go into closed session and then review the 24 withheld records and determine whether to expressly waive its privilege with respect to some or all of those records.

In any case, because a provision of the Sunshine Ordinance is now unenforceable a result of the actions taken by Mr. St. Croix, ostensibly on its behalf, the Commission will have to either: (1) repudiate its Executive Director's actions and take whatever steps are necessary to restore the enforceability of that provision, or (2) amend the two cited Bylaw provisions to reflect that it will no longer (a) fully comply with the Sunshine Ordinance or the Brown Act (Bylaw Article I, Section 3), nor (b) "actively enforce all ethics laws and rules, including ... open government laws" (Bylaw Article II-2).

Although well over a year has passed since my §67.34 Complaint was filed, Mr. St. Croix, in his capacity as Executive Director, has not seen fit to inform the Commissioners of it, as far as I can tell. It seems to have just disappeared.

(5) The Litigation and the Task Force's Order

The Court of Appeal decision involved only one of Mr. St. Croix's violations, to wit: whether his assertion of the attorney-client privilege as the basis for withholding disclosure of some of the requested records was subject to Sunshine Ordinance §67.24(b)(1)(iii). The Court of Appeal ultimately ruled that this provision was "trumped" by the City Charter provision designating the City Attorney as the Commission's lawyer carried with it that privilege.

However, Mr. St. Croix's assertion of the attorney-client privilege was not the only issue before the Task Force and it is the other issues that will be before the Commission at the Hearing, if it goes forward. As noted in the Task Force's referral letter:

“At the September 4, 2013 SOTF meeting the Task Force found John St. Croix in violation of the Sunshine Ordinance and voted to refer the complaint to the Board of Supervisors and the Ethics Commission for violating Sections 67.21(b), 67.27 (a)(b) and 67.24 (b)(1) (i) &(iii).”

Sections 67.27(a) and (b) provide:

“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 or elsewhere.”

Section 67.24(b)(1)(i) provides:

“(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

“(i) A pre-litigation claim against the City;...”

Because these other violations are involved, once the pre-Hearing issues are resolved, the Hearing should be directed at those.

#### (6) Background of the Show Cause Hearing

My records request was submitted on October 3, 2012. Mr. Steven Massey, the Commission’s Information Technology Officer, responded by his October 12, 2012 letter noting that due to the volume of responsive records, they would be downloaded to a CD for me. He then added:

“We are withholding other documents in their entirety, pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030.”

He did not specify the number or nature of the records being withheld (e.g. email or Memoranda) or which of the claimed exemptions applied to which of those records.

By letter, I replied to him:

“Evidence Code §§952 and 954 create the “attorney-client privilege” and CCP §2018.30 creates two so-called “work product” doctrines, one absolute and the other conditional. Mr. St. Croix relies on these two exemptions to justify his withholding of certain unidentified public records. However, in the case of the conditional work product doctrine - §2018.30(b) – it is not clear whether it is even applicable when no litigation is involved.

“By combining several exemptions so that more than one of those exemptions could be applicable to each one and/or all of the withheld records, Mr. St. Croix has taken a position that is not defensible. It is incumbent on him to describe, in some comprehensible way, each of those withheld public records he claims is subject to the attorney-client privilege exemption and each of those he claims is subject to either the absolute work product doctrine or the conditional work product doctrine.”

Following a November 1, 2012 email to Mr. Massey requesting a response to my letter, Mr. St. Croix sent the following email the next day:

“Mr. Grossman - This response is regarding your communication below and the attached letter to Steven Massey from you dated October 21, 2012. You have already received all documents responsive to your request. We are not required to create documents that do not exist. I consider this matter closed.”

My Complaint with the Task Force was filed in November 2012. The Task Force heard it on June 5, 2013. At that hearing, which lasted over an hour, *Mr. St. Croix told the Task Force members that he did not know how many records were withheld or how many pages were in those records and that he had never read them.* The Task Force found that the withheld records were disclosable and entered an Order of Determination. Mr. St. Croix did not provide me with the records as ordered. At the Task Force’s Compliance and Amendments Committee’s August 20 2013 meeting, one of the Commission’s staff lawyers attended on his behalf, Mr. St. Croix repeated his position. At the Task Force’s September 4, 2013 meeting, *Mr. St. Croix again told the Task Force members that he would not provide any general information regarding the withheld records, did not know how many records were withheld, what exemptions applied to each of them and still had not read them.* The Task Force then found him in violation of §§67.21(b), 67.27(a) and (b) and 67.24(b)(1)(i) and (iii), as stated in the Referral Letter. (Emphasis Added.)

My Mandamus Petition to compel disclosure was filed in the Superior Court on September 18, 2013. In his October 2013 declaration supporting Mr. St Croix’s Opposition to the Petition, Deputy City Attorney Shen stated:

“5. I have reviewed the documents previously withheld by the Commission in response to Petitioner Allen Grossman's October 3, 2012 public records request ... The Commission initially withheld a total of 28 documents responsive to Mr. Grossman's request.

“6. On October 9, 2013, I sent Michael Ng, counsel to Petitioner Grossman, four of those previously withheld documents that upon further review, are either (1) not subject to attorney-client privilege or attorney work product protection or (2) may be disclosed with minor redactions . . .

“7. At the current time, the Commission has continued to withhold a total of 24 responsive documents. Of these 24 documents, 15 documents — largely e-mails — constitute requests from the Commission's staff to the City Attorney's Office for legal advice concerning the Commission's proposed regulations for Sunshine complaints. The nine remaining documents respond to those inquires and consist of advice from the City Attorney's Office to the Commission's staff on the proposed regulations. ...”

The Superior Court entered an Order requiring the disclosure of the remaining 24 records. At the hearing on my Mandamus Petition, Mr. Shen conceded that none of the 24 records was subject to the work-product exemption. That Order was the subject of the Commission’s Mandamus Petition filed with the Court of Appeal on November 22, 2013.

The litigation cost the San Francisco taxpayers over \$150,000. That works out to about \$6250 for each of the 24 withheld records. To what end?

## Argumedo, Catherine (ETH)

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**From:** St.Croix, John  
**Sent:** Friday, January 16, 2015 12:05 PM  
**To:** Argumedo, Catherine (ETH)  
**Subject:** Show Cause Hearing Response re: Grossman  
**Attachments:** grossmanshowcauseresp1.26.15.pdf

John St. Croix  
Executive Director  
San Francisco Ethics Commission



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

PAUL A. RENNE  
VICE-CHAIRPERSON

BRETT ANDREWS  
COMMISSIONER

BEVERLY HAYON  
COMMISSIONER

PETER KEANE  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

January 16, 2015

Members, San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 229  
San Francisco, CA 94102

Dear Commissioners:

This is in response to the "Notice to Show Cause" memorandum dated December 12, 2014 regarding Ethics Complaint #01-140107. The history of this complaint is laid out in the memorandum.

The documents in question were never disclosable. This the San Francisco Charter made clear. Our advice from the City Attorney's office was also clear. When the request was made, we carefully reviewed the documents, disclosed 120 of them entirely, redacted some information from six and withheld 24 others (asking for and receiving legal advice from the City Attorney's office). These actions are entirely justified.

Based on the judicial history of this complaint, I respectfully request that the Ethics Commissioners make a finding of no violation in this case. The essence of this matter is the applicability of attorney-client privilege to city agencies and the resolution lies in the question of whether the San Francisco Charter is superior to a local ordinance when they contradict.

In the hearing of this issue at the Superior Court, the notion of Charter superiority was not considered. Judge Goldsmith, in his initial ruling, stated "the fact that 67.24(b) conflicts with the City charter is just not before me." In this statement, he seems to acknowledge that the conflict exists. In any case, the California Court of Appeal First District disagreed with Judge Goldsmith and his eventual decision. By virtue of its refusal to hear an appeal, the California Supreme Court concurred. The courts are also clear that these documents are not disclosable.

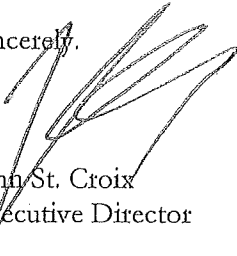
I would note in passing that, in addition to the Ethics Commission, this matter was referred for enforcement to the Board of Supervisors. No member of the Board requested a hearing on the matter, and the Clerk formally closed the referral with no further action planned on January 22, 2014.

It does not seem necessary to repeat here all of the material provided to the Commission in court and staff documents. At the time of the document request in question, we withheld a portion of requested documents based on the clear advice of the City Attorney's office.

Because the higher courts have agreed with the City's position that the Charter supersedes an ordinance and because the Charter provides for attorney-client privilege in this and similar situations, we were never obligated to disclose the documents in question and I ask for a finding of no violation in this case.

For your information, a copy of the Court of Appeal decision is attached, as the Supreme Court's notice of denied petition and the closure notice from the Board of Supervisors. The Remittitur was filed and the Superior Court's decision became final on December 3, 2014. The notice of this is also attached.

Sincerely,

A handwritten signature in black ink, appearing to read "John St. Croix". The signature is stylized with several overlapping loops and a long, sweeping underline.

John St. Croix  
Executive Director

Cc: Alan Grossman



COPY

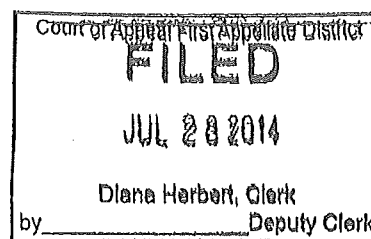
Filed 7/28/14

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE



JOHN ST. CROIX, as Executive Director,  
etc., et al.,

Petitioners,

v.

THE SUPERIOR COURT OF THE CITY  
AND COUNTY OF SAN FRANCISCO,

Respondent;

ALLEN GROSSMAN,

Real Party in Interest.

A140308

(San Francisco City & County  
Super. Ct. No. CPF-13-513221)

San Francisco resident Allen Grossman, relying on state and local public records laws, sought to obtain from John St. Croix, executive director of the San Francisco Ethics Commission (Ethics Commission or commission), documents pertaining to the development of certain commission regulations. St. Croix provided more than 120 documents, but, citing the attorney-client privilege (see Evid. Code, §§ 952, 954), withheld 24 written communications between the commission and the San Francisco City Attorney's Office.

Grossman argued, and the trial court held, that a provision of the San Francisco Sunshine Ordinance (Sunshine Ordinance or ordinance) (S.F. Admin. Code, ch. 67) required disclosure of the documents, even if they otherwise would be protected by the privilege. St. Croix and the commission (to whom we sometimes refer collectively as City) petition for a writ of mandate, contending City's charter incorporates the attorney-client privilege and supersedes any contrary ordinance provision. We agree, and we hold

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the trial court erred in ordering disclosure of the documents. We therefore grant City's writ petition.<sup>1</sup>

## I. BACKGROUND

In October 2012, Grossman submitted a request under the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq.)<sup>2</sup> and the Sunshine Ordinance for documents relating to the commission's regulations governing complaints alleging violations of the ordinance. As part of this request, Grossman expressly sought production of written communications between the Ethics Commission and the city attorney's office. Grossman requested drafts of the commission's Sunshine Ordinance regulations, a September 14, 2012 staff report about the regulations, and all documents relating to "[t]he preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, *including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney.*" (Italics added.)

St. Croix and his staff produced more than 120 documents, six of which were partially redacted. St. Croix withheld other documents in their entirety on the grounds they were protected by the attorney-client privilege and the attorney work product doctrine. The 24 withheld documents include (1) 15 written requests from the commission's staff to the city attorney's office for legal advice about the commission's proposed regulations, and (2) nine written responses by the city attorney's office to the commission's staff, providing advice about the proposed regulations.

Grossman petitioned for a writ of mandate in the trial court, arguing a provision of the Sunshine Ordinance (S.F. Admin. Code, § 67.24, subd. (b)(1)(iii)) compels disclosure of the documents at issue, even if they would otherwise be protected by privilege. That

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<sup>1</sup> Because we conclude the documents are protected by the attorney-client privilege, we need not address City's argument that some of the documents are also protected by the attorney work product doctrine.

<sup>2</sup> All statutory references are to the Government Code unless otherwise stated.

provision of the ordinance states that, “[n]otwithstanding any exemptions otherwise provided by law,” the following documents are subject to disclosure under the ordinance: “(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco Governmental Ethics Code, or this Ordinance [(i.e., the Sunshine Ordinance)].” (S.F. Admin. Code, § 67.24, subd. (b)(1).)<sup>3</sup>

City opposed disclosure, contending the San Francisco City Charter (charter), which creates the office of the city attorney and specifies his or her duties, incorporates the attorney-client privilege, and the ordinance cannot validly modify the charter by barring City from asserting the privilege.

The trial court granted Grossman’s petition, holding San Francisco Administrative Code section 67.24, subdivision (b)(1)(iii) required production of the 24 attorney-client communications withheld by St. Croix. The court stated City’s argument that the charter superseded the ordinance provision, an issue that both parties had briefed and argued, was “not properly before” the court.

St. Croix and the commission petitioned this court for a writ of mandate (see § 6259, subd. (c)) and moved for a stay of the trial court’s order. We stayed the court’s order pending resolution of this writ proceeding, and later issued an order to show cause.

## II. DISCUSSION

### A. The Attorney-Client Privilege and Public Records Laws

Our Supreme Court has stated: “The attorney-client privilege, set forth at Evidence Code section 954, confers a privilege on the client ‘to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer . . . .’ The privilege ‘has been a hallmark of Anglo-American jurisprudence for

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<sup>3</sup> The trial court took judicial notice of San Francisco Administrative Code section 67.24. (See Evid. Code, § 452, subd. (b); *Madain v. City of Stanton* (2010) 185 Cal.App.4th 1277, 1280, fn. 1 [taking judicial notice of relevant portions of municipal code].)

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almost 400 years.’ [Citation.] Its fundamental purpose ‘is to safeguard the confidential relationship between clients and their attorneys so as to promote full and open discussion of the facts and tactics surrounding individual legal matters. [Citation.] . . . [¶] Although exercise of the privilege may occasionally result in the suppression of relevant evidence, the Legislature of this state has determined that these concerns are outweighed by the importance of preserving confidentiality in the attorney-client relationship. As this court has stated: “The privilege is given on grounds of public policy in the belief that the benefits derived therefrom justify the risk that unjust decisions may sometimes result from the suppression of relevant evidence.” [Citations.]’ [Citation.] ‘[T]he privilege is absolute and disclosure may not be ordered, without regard to relevance, necessity or any particular circumstances peculiar to the case.’ ” (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 732.)

The scope and availability of the attorney-client privilege are governed by statute. (See Evid. Code, § 950 et seq.) “Courts may not add to the statutory privileges except as required by state or federal constitutional law [citations], nor may courts imply unwritten exceptions to existing statutory privileges.” (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 373 (*Roberts*); see Evid. Code, § 911.)

In the context of public records requests, the CPRA expressly exempts from disclosure documents that fall within the statutory attorney-client privilege. The CPRA defines “public record” as a “writing containing information relating to the conduct of the people’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” (§ 6252, subd. (e).) The CPRA exempts certain public records from disclosure, including “[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.” (§ 6254, subd. (k).) “By its reference to the privileges contained in the Evidence Code, . . . the [CPRA] has made the attorney-client privilege applicable to public records.” (*Roberts, supra*, 5 Cal.4th at p. 370.)

In *Roberts*, the Supreme Court emphasized the importance of the attorney-client privilege in protecting the confidentiality of written communications between a public agency and its counsel. (*Roberts, supra*, 5 Cal.4th at pp. 380–381.) The *Roberts* court held that, although the Ralph M. Brown Act (Brown Act; § 54950 et seq.) establishes open meeting requirements applicable to local governing bodies (see §§ 54950, 54953) and abrogates the attorney-client privilege (with certain exceptions) for the purposes of those open meeting requirements (see § 54956.9), the Brown Act does not abrogate the privilege applicable to written communications under the CPRA. (*Roberts*, at pp. 373–374, 377.) The *Roberts* court rejected the argument that, in the public agency context, the attorney-client privilege should not apply or should be limited to situations involving pending litigation. (*Id.* at pp. 379–380.) Such arguments were “inconsistent with the decision of the Legislature in enacting the [CPRA] to afford public entities the attorney-client privilege as to writings to the extent authorized by the Evidence Code.” (*Id.* at p. 380.)

**B. The Charter Incorporates the State Law Attorney-Client Privilege and Supersedes the Contrary Ordinance Provision**

City argues provisions of its charter establishing the office and duties of the city attorney (1) incorporate the protections of the state law attorney-client privilege for written communications between the city attorney and his or her clients, and therefore (2) supersede the provision of the Sunshine Ordinance purporting to compel disclosure of documents falling within the scope of the privilege. We agree.

**1. The Charter Incorporates the Privilege**

“The City Charter represents the supreme law of the City and County of San Francisco, subject only to conflicting provisions in the United States and California Constitutions or to preemptive state law. [Citation.] The provisions of the City Charter supersede all municipal laws, ordinances, rules or regulations inconsistent therewith.” (*Stuart v. Civil Service Com.* (1985) 174 Cal.App.3d 201, 206.) “Generally, the same principles of construction applicable to statutes apply to the interpretation of municipal charters. [Citations.] The courts must always look first to the express language of the

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statute to ascertain its meaning.” (*United Assn. of Journeymen v. City and County of San Francisco* (1995) 32 Cal.App.4th 751, 760.)

City’s charter designates the city attorney as an elected officer of City and specifies the duties of the office. (S.F. Charter, §§ 6.100, 6.102.)<sup>4</sup> The charter states the city attorney must “[r]epresent the City and County in legal proceedings with respect to which it has an interest.” (S.F. Charter, § 6.102(1).) Under certain circumstances, the city attorney also must represent individual City officers and officials in litigation. (S.F. Charter, § 6.102(2).) The city attorney shall initiate litigation when “a cause of action exists in favor of” City. (S.F. Charter, § 6.102(3).) Significantly for the present case, the city attorney must, “[u]pon request, provide advice or written opinion to any officer, department head or board, commission or other unit of government of” City.<sup>5</sup> (S.F. Charter, § 6.102(4).) The city attorney also must “[m]ake recommendations for or against the settlement or dismissal of legal proceedings” (S.F. Charter, § 6.102(5)) and must review and approve as to form “all surety bonds, contracts and, prior to enactment, all ordinances.” (S.F. Charter, § 6.102(6).) The charter requires the city attorney to establish a claims bureau “to investigate, evaluate and settle for the several boards, commissions and departments all claims for money or damages.” (S.F. Charter, § 6.102(9).)

The above charter provisions, by establishing the office and responsibilities of the city attorney, establish an attorney-client relationship between the city attorney on the one hand, and City and its officers and agencies (including the Ethics Commission) on the other. As noted above, state law establishes that the privilege’s protection of the

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<sup>4</sup> The trial court took judicial notice of section 6.102 of the San Francisco Charter. We grant the parties’ request that we take judicial notice of section 6.100 of the San Francisco Charter. (See Evid. Code, §§ 451, subd. (a) [judicial notice of city charter provisions], 459, subd. (a).)

<sup>5</sup> In addition to this provision requiring the city attorney to provide advice to all boards and commissions, section 15.102 of the San Francisco Charter specifies the city attorney is the legal advisor to the Ethics Commission. We grant the parties’ request that we take judicial notice of sections 15.100 through 15.102 of the San Francisco Charter.

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confidentiality of written attorney-client communications is fundamental to the attorney-client relationship, in the public sector as well as in the private sector, and is vital to the effective administration of justice. (See Evid. Code, § 950 et seq.; *Roberts, supra*, 5 Cal.4th at pp. 380–381.) We therefore conclude the charter incorporates the state law attorney-client privilege for written communications between the city attorney and his or her clients.

In reaching this conclusion, we are guided by *Welfare Rights Organization v. Crisan* (1983) 33 Cal.3d 766 (*Welfare Rights*), in which our Supreme Court emphasized the importance of confidential communications to a relationship similar to that between attorney and client. The *Welfare Rights* court concluded a statute (Welf. & Inst. Code, § 10950) authorizing recipients of public benefits to be represented by laypersons in administrative proceedings necessarily implied the existence of a privilege protecting communications between the lay representative and the client. (*Welfare Rights*, at pp. 770–771.) The statute specified a benefits applicant or recipient could appear “ ‘in person or through an authorized representative.’ ” (*Id.* at p. 770, italics added by *Welfare Rights*.) The Supreme Court held that “the considerations which support the privilege are so generally accepted that the Legislature must have implied its existence as an integral part of the right to representation by lay persons.” (*Id.* at p. 771.) Similarly, here, we conclude the state statutory privilege’s protection of attorney-client communications is an integral part of the attorney-client relationship created by the charter.<sup>6</sup>

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<sup>6</sup> In addition to specifying the above duties of the city attorney, the charter states that, “[s]ubject to the powers and duties set forth in” the charter, the city attorney and other specified elective officers “shall have such additional powers and duties prescribed by state law for their respective office.” (S.F. Charter, § 6.100.) City argues this provision requires the city attorney to comply with state laws requiring attorneys to protect their clients’ confidences. (See Bus. & Prof. Code, § 6068, subd. (e)(1); Evid. Code, § 955; see also State Bar Rules Prof. Conduct, rule 3-100(A).) Because we conclude the charter’s specification of the city attorney’s duties creates an attorney-client relationship between the city attorney and City agencies, and incorporates the attorney-client privilege as an integral part of that relationship, we do not address whether section

Grossman argues we should construe the charter narrowly to avoid any limitation on the public's right of access. He cites article I, section 3, subdivision (b)(2) of the California Constitution, which states: "A statute, court rule, or other authority . . . shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. . . ." (See *Sander v. State Bar of California* (2013) 58 Cal.4th 300, 312–313.) That provision does not assist Grossman. We have concluded above that the charter establishes an attorney-client relationship between the city attorney and City agencies. Grossman does not dispute that conclusion and does not claim that a narrower construction of the charter would produce a different result. Under state law, the attorney-client privilege is a "generally accepted" and "integral" part of the attorney-client relationship. (See *Welfare Rights*, *supra*, 33 Cal.3d at p. 771.) Accordingly, we have further concluded above that the charter necessarily incorporates the state law attorney-client privilege as a part of the attorney-client relationship it creates. That conclusion does not result from a broad construction of the charter's provisions (which unambiguously create an attorney-client relationship) and would not be altered by adopting a narrower construction of those provisions; instead, our holding just reflects the well-established centrality of the privilege to the attorney-client relationship.<sup>7</sup>

Grossman also contends we should construe the charter narrowly to avoid a conflict with the ordinance. But the case he cites, *People v. Kennedy* (2001) 91 Cal.App.4th 288, 290, 297, involved an alleged conflict between two statutory provisions appearing in different codes, the Business and Professions Code and the

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6.100 of the San Francisco Charter provides an independent basis for granting City's petition.

<sup>7</sup> We also note article I, section 3, subdivision (b), which was added to the Constitution by Proposition 59, a 2004 ballot measure (see *Alvarez v. Superior Court* (2007) 154 Cal.App.4th 642, 656), specifies it "does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records . . . that is in effect on the effective date of this subdivision . . . ." (Cal. Const., art. I, § 3, subd. (b)(5)), such as the preexisting statutory exemption for privileged materials (see Evid. Code, § 954; Gov. Code § 6254, subd. (k); *Roberts*, *supra*, 5 Cal.4th at pp. 370–371).



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Health and Safety Code. In that context, a court should “adopt, if possible, a construction which avoids apparent conflicts between different statutory provisions . . . .” (*People v. Kennedy*, at p. 297.) That principle does not establish a court must construe a city charter to conform to a municipal ordinance. To the contrary, when a city enacts an ordinance or takes other action, it cannot contravene its charter. (See *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 171 [charter city may not act in conflict with its charter; “Any act that is violative of or not in compliance with the charter is void.”]; see also *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048, 1050–1051, 1058–1060 [application of provision of San Francisco Sunshine Ordinance contravened state statute].) In any event, as noted above, construing the charter’s provisions more narrowly would not change our analysis. The charter unambiguously creates an attorney-client relationship between the city attorney and the commission, and the state law attorney-client privilege is a fundamental aspect of that relationship.

Grossman next claims there is no conflict between the charter’s establishment of an attorney-client relationship and the ordinance’s purported elimination of the privilege for certain attorney-client communications, because “attorney-client communications are not necessarily confidential,” especially for public sector attorneys. Grossman notes that (as we have discussed above) the Brown Act requires that most meetings of local governing bodies be public and limits the attorney-client privilege in that context (see § 54956.9). But, as we have also explained above (and as Grossman does not appear to dispute), the Brown Act does not limit the privilege as to *written* communications between public sector attorneys and their clients, such as the materials at issue here. Written attorney-client communications remain privileged and exempt from disclosure pursuant to the CPRA. (Evid. Code, § 954; Gov. Code § 6254, subd. (k); *Roberts, supra*, 5 Cal.4th at pp. 377, 381.)

Grossman argues the Brown Act’s provisions nevertheless support a conclusion that, at least in the public sector, confidentiality is not fundamental to the provision of legal advice. Not so. California law recognizes that “public entities need confidential legal advice to the same extent as do private clients.” (*Roberts, supra*, 5 Cal.4th at

p. 374.) Our determination that the charter incorporates the state law attorney-client privilege and its protection of written attorney-client communications is thus consistent with the “balance between the competing interests in open government and effective administration [that] has been struck for local governing bodies in the [CPRA] and the Brown Act.” (*Roberts*, at.p. 381.)

## 2. The Charter Supersedes the Contrary Ordinance Provision

Because the charter incorporates the attorney-client privilege, an ordinance cannot eliminate the privilege for a class of communications between the city attorney and his or her clients. “‘[A]n ordinance must conform to, be subordinate to, not conflict with, and not exceed the [city’s] charter, and can no more change or limit the effect of the charter than a legislative act can modify or supersede a provision of the constitution of the state.’” (*Currieri v. Roseville* (1970) 4 Cal.App.3d 997, 1001.) To the extent San Francisco Administrative Code section 67.24, subdivision (b)(1)(iii) purports to compel disclosure of materials that fall within the scope of the attorney-client privilege, such as the written communications between the Ethics Commission and the city attorney at issue here, it conflicts with the charter’s protection of such materials. The trial court therefore erred in ordering disclosure of the documents pursuant to the ordinance.<sup>8</sup>

Seeking to avoid this result, Grossman argues that, because San Francisco Administrative Code section 67.24, subdivision (b)(1)(iii) purports to require disclosure of the materials at issue, they were “never confidential in the first place, and no privilege ever attached.” He alternatively contends that, if the privilege did apply, the voters could “waive” it by enacting the ordinance. We reject both arguments. Because the charter incorporates the privilege, an ordinance (whether enacted by City’s board of supervisors or by the voters) cannot eliminate it, either by designating as not confidential a class of materials that otherwise would be protected by the privilege, or by waiving the privilege

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<sup>8</sup> Because we conclude the charter supersedes the disputed ordinance provision, we do not address City’s argument that the ordinance provision is “invalid for [the] independent reason” that it would “impermissibly interfere” with the city attorney’s performance of his or her duties.

as to that category of documents; only a charter amendment can achieve that result. (See *City and County of San Francisco v. Patterson* (1988) 202 Cal.App.3d 95, 102, 104–105 [initiative ordinance cannot limit effect of charter; electorate has no greater power to legislate by ordinance than City’s board of supervisors possesses].)

Grossman also cites a provision of the CPRA, section 6253, subdivision (e), that permits localities to provide greater access to records than the CPRA itself requires. Section 6253, subdivision (e) states: “Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in [the CPRA].” But section 6253, subdivision (e) does not purport to authorize a locality to enact an ordinance about records access that conflicts with the locality’s governing city charter. To change local law in this circumstance, a charter amendment is necessary. (See *City and County of San Francisco v. Patterson, supra*, 202 Cal.App.3d at pp. 102, 104–105.)

Finally, Grossman appears to suggest the privilege should protect the disputed materials from disclosure only if the commission demonstrates disclosure of those particular documents would impede the city attorney’s representation of the commission. We disagree. As noted, when the privilege applies, as it does here under the charter, it “ ‘is absolute and disclosure may not be ordered, without regard to relevance, necessity or any particular circumstances peculiar to the case.’ ” (*Costco Wholesale Corp. v. Superior Court, supra*, 47 Cal.4th at p. 732.)

### **C. The Alleged Procedural Impropriety of the Petition**

The CPRA provides that, if a trial court orders a “public official” to disclose records, a “party” to the trial court proceeding may seek appellate review by filing a writ petition. (§ 6259, subds. (a)–(c).) Grossman directed his underlying records request solely to St. Croix, but then named both St. Croix and the Ethics Commission as parties in his petition for a writ of mandate in the trial court. As a result, both St. Croix and the commission are parties to the petition in this court. Grossman now argues the instant petition is “void,” because the commission did not meet publicly to authorize its filing.

We disagree. The general provisions of the Brown Act cited by Grossman (§§ 54952.6, 54954.2, subd. (a), 54956.9) do not establish a meeting by the members of an affected local commission or other body is a prerequisite to the exercise of the appellate remedy expressly specified in the CPRA.

**D. The Parties' Requests for Judicial Notice**

As noted, the trial court took judicial notice of Section 67.24 of the San Francisco Administrative Code and section 6.102 of the San Francisco Charter; we have taken judicial notice of sections 6.100 and 15.100 through 15.102 of the San Francisco Charter. We deny the parties' requests for judicial notice of other ordinance provisions, other charter provisions, and other items, because those materials are not relevant to our disposition of this matter. Accordingly, (1) City's November 22, 2013 request for judicial notice is granted as to exhibit B (S.F. Charter § 6.100) and exhibit F (S.F. Charter §§ 15.100–15.102) and is otherwise denied; (2) Grossman's December 23, 2013 request for judicial notice is granted as to (a) the portion of exhibit 1 that includes section 67.24 of the San Francisco Administrative Code and (b) the portion of exhibit 2 that includes sections 6.100, 6.102, and 15.100 through 15.102 of the San Francisco Charter, and is otherwise denied; (3) City's January 14, 2014 request for judicial notice is denied; (4) Grossman's March 7, 2014 request for judicial notice is granted as to (a) the portion of exhibit 1 that includes section 67.24 of the San Francisco Administrative Code and (b) the portion of exhibit 2 that includes sections 6.100, 6.102, and 15.100 through 15.102 of the San Francisco Charter, and is otherwise denied; and (5) City's April 1, 2014 request for judicial notice is denied.

**III. DISPOSITION**

The petition for a writ of mandate is granted. Let a peremptory writ of mandate issue directing respondent court to vacate the order granting Grossman's petition for a writ of mandate, and to enter a new order denying Grossman's petition. Upon finality of this decision, the temporary stay order is vacated. Costs in this original proceeding are awarded to St. Croix and the Ethics Commission.

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Becton, J.\*

We concur:

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Dondero, Acting P.J.

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Banke, J.

\* Judge of the Contra Costa County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

*St. Croix v. Superior Court, A140308*

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Trial Court: San Francisco County Superior Court

Trial Judge: Hon. Ernest H. Goldsmith

Counsel:

City and County of San Francisco Office of the City Attorney, Dennis J. Herrera, City Attorney, Therese M. Stewart, Chief Deputy City Attorney, Vince Chhabria, Chief of Appellate Litigation, Andrew N. Shen and Joshua S. White, Deputy City Attorneys for Petitioners.

No appearance for Respondent.

Kerr & Wagstaffe LLP, Michael Kai Ng and Jasmine K. Singh for Real Party in Interest.

Court of Appeal, First Appellate District, Division One - No. A140308

S221082

IN THE SUPREME COURT OF CALIFORNIA

En Banc

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JOHN ST. CROIX, as Executive Director, etc. et al., Petitioners,

v.

SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO,  
Respondent;

ALLEN GROSSMAN, Real Party in Interest.

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The petition for review is denied.

SUPREME COURT  
FILED

NOV 12 2014

Frank A. McGuire Clerk

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Deputy

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CANTIL-SAKAUYE

*Chief Justice*

BOARD of SUPERVISORS



C: COB Leg Dep  
Andres  
Rusa

City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 544-5227

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MEMORANDUM

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Date: January 22, 2014  
To: Victor Young  
Clerk, Sunshine Ordinance Task Force  
From: *AC* Angela Calvillo, Clerk of the Board  
Subject: SOTF Referral – Complaint No. 12056

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On November 22, 2013, the Board of Supervisors (Board) received a referral for enforcement from the SOTF, for Complaint No. 12056 (Mr. Allen Grossman against John St. Croix, Director of the Ethics Commission). The Board was informed of the process that upon receipt of the referral, the Board would have 60 days to request a hearing to consider the violation and possible enforcement on the matter.

The deadline to request a hearing was January 21 at 5:00pm. Given that no requests for a hearing were introduced by a Member of the Board, no further action is expected and the matter is considered closed.



COURT OF APPEAL, FIRST APPELLATE DISTRICT  
350 MCALLISTER STREET  
SAN FRANCISCO, CA 94102  
DIVISION 1

Office of the County Clerk  
San Francisco County Superior Court - Main  
Attention: Civil Appeals  
400 McAllister Street, 1st Floor  
San Francisco, CA 94102

**FILED**  
San Francisco County Superior Court

DEC 05 2014

CLERK OF THE COURT

BY:  Deputy Clerk

JOHN ST. CROIX et al.,  
Petitioners,

v.

SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO,  
Respondent;  
ALLEN GROSSMAN,  
Real Party in Interest.

A140308  
San Francisco County No. CPF13513221

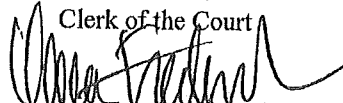
\*\* REMITTITUR \*\*

I, Diana Herbert, Clerk of the Court of Appeal of the State of California, for the First Appellate District, do hereby certify that the attached is a true and correct copy of the original opinion or decision entered in the above-entitled cause on July 28, 2014 and that this opinion has now become final.

Petitioner \_\_\_ Respondent to recover costs  
 Each party to bear own costs  
 Costs are not awarded in this proceeding  
 See decision for costs determination

Witness my hand and the Seal of the Court affixed at my office this DEC 03 2014

Very truly yours,  
Diana Herbert  
Clerk of the Court

  
Laura Fredericks  
Deputy Clerk

P.O. Report: \_\_\_\_\_  
Marsden Transcript: \_\_\_\_\_  
Boxed Transcripts: \_\_\_\_\_  
Exhibits:  \_\_\_\_\_  
None of the above: \_\_\_\_\_

San Francisco  
Ethics Commission



25 Van Ness Ave., Suite 220  
San Francisco, CA 94102  
Phone 252-3100 Fax 252-3112

## **ETHICS COMMISSION REGULATIONS FOR HANDLING VIOLATIONS OF THE SUNSHINE ORDINANCE**

*Effective Date: January 25, 2013*  
*Includes amendments effective November 22, 2013*

## TABLE OF CONTENTS

### CHAPTER ONE

I.	Preamble.....	2
II.	Definitions.....	2

### CHAPTER TWO

I.	Referrals to the Ethics Commission .....	5
II.	Show Cause Hearing .....	5

### CHAPTER THREE

I.	Complaints Alleging Willful Violations of the Sunshine Ordinance by Elected Officials or Department Heads or Complaints Filed Directly with the Ethics Commission Alleging Violations of the Sunshine Ordinance.....	8
II.	Investigation and Recommendation .....	9
III.	Public Hearing .....	10

### CHAPTER FOUR

I.	Miscellaneous Provisions .....	13
II.	Severability .....	15

## CHAPTER ONE

### **I. PREAMBLE**

Pursuant to San Francisco Charter, section 15.102, the San Francisco Ethics Commission promulgates these Regulations in order to ensure compliance with the San Francisco Sunshine Ordinance, San Francisco Administration Code, section 67.1, et seq. These Regulations shall apply to complaints alleging violations of the Sunshine Ordinance. All complaints alleging violations of conflict of interest, campaign finance, lobbyist, campaign consultant or other governmental ethics laws shall be handled separately under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

### **II. DEFINITIONS**

For purposes of these Regulations, the following definitions shall apply:

- A. “Brown Act” means California Government Code section 54950, et seq.
- B. “Business day” means any day other than a Saturday, Sunday, City holiday, or a day on which the Commission office is closed for business.
- C. “California Public Records Act” means California Government Code section 6250, et seq.
- D. “City” means the City and County of San Francisco.
- E. “City officer” means any officer identified in San Francisco Administrative Code Section 1.50, as well as any City body composed entirely of such officers.
- F. “Commission” means the Ethics Commission.
- G. “Complaint” means a Task Force referral or a referral from the Supervisor of Records, a written document submitted directly to the Ethics Commission alleging a violation of the Sunshine Ordinance, or a matter initiated by Ethics Commission staff alleging a violation of the Sunshine Ordinance.
- H. “Complainant” means a person or entity that initiated a matter with the Task Force, Supervisor of Records, or Commission alleging a violation of the Sunshine Ordinance. “Complainant” shall also mean the Commission if the matter was initiated by Commission staff.
- I. “Custodian” means a City officer or employee having custody of any public record.

J. “Day” means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next business day.

K. “Deliver” means transmit by U.S. mail or personal delivery to a person or entity. The Commission, the Executive Director, the Task Force, a Respondent, or the Complainant receiving material may consent to any other means of delivery, including delivery by e-mail or fax. In any proceeding, the Commission Chairperson may order that the delivery of briefs or other materials be accomplished by e-mail.

L. “Elected official” shall mean the Mayor, a Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor, Public Defender, a Member of the Board of Education of the San Francisco Unified School District, and a Member of the Governing Board of the San Francisco Community College District.

M. “Executive Director” means the Executive Director of the Commission or the Executive Director's designee.

N. “Exculpatory information” means information tending to show that the Respondent has not committed the alleged violation(s).

O. “Order of Determination” means: 1) an order from the Task Force that forms the basis of a show cause hearing for Task Force referrals made under Sunshine Ordinance section 67.30(c); or 2) a final recommendation issued by the Task Force, made pursuant to Sunshine Ordinance section 67.34, that a willful violation of the Sunshine Ordinance by an elected official or department head occurred.

P. “Public Records” means records as defined in section 6252(e) of the California Public Records Act, which includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics, and/or Sunshine Ordinance section 67.20(b).

Q. “Referral” means a document from the Task Force or Supervisor of Records to the Commission finding a violation of the Sunshine Ordinance.

R. “Respondent” means a City officer or City employee who is alleged or identified in a complaint to have committed a violation of the Sunshine Ordinance.

S. “Sunshine Ordinance” means San Francisco Administrative Code section 67.1, et seq.

T. “Task Force” means the Sunshine Ordinance Task Force, established by San Francisco Administrative Code section 67.30.

U. “Willful violation” means an action or failure to act with the knowledge that such act or failure to act was a violation of the Sunshine Ordinance.

## CHAPTER TWO

### **I. REFERRALS TO THE ETHICS COMMISSION**

#### **A. Matters to be heard in a Show Cause Hearing.**

1. Under this Chapter, the Ethics Commission will conduct a Show Cause Hearing on any referral, as defined by these Regulations, finding:
  - a. willful violations of the Sunshine Ordinance by City officers and employees (other than elected officials or department heads), or
  - b. non-willful violations of the Sunshine Ordinance by elected officials, department heads, or City officers and employees.
2. Complaints alleging willful violations of the Sunshine Ordinance against elected officials and department heads shall be handled pursuant to Chapter Three of these regulations.

#### **B. Scheduling of Show Cause Hearing.**

1. After receipt of a referral, the Commission shall schedule a Show Cause Hearing on the matter at the next regular Ethics Commission meeting, provided that the Show Cause Hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.
2. In the event that four or more Commissioners will not be present at the scheduled Show Cause Hearing, the Commission may reschedule or continue to the next practicable regular Ethics Commission meeting.

### **II. SHOW CAUSE HEARING**

**A. Public Hearing.** The Show Cause Hearing shall be open to the public.

**B. Standard of Proof.** The Respondent(s) shall have the burden to show that he or she did not commit a violation of the Sunshine Ordinance.

#### **C. Hearing Procedures.**

1. Each Respondent and Complainant may speak on his or her own behalf, subject to the following time limits: each Respondent shall be permitted a five-minute statement; each Complainant shall be permitted a five-minute statement; and each Respondent shall be permitted a three-minute rebuttal. At his or her discretion, the Commission Chairperson may allow additional testimony and may extend the time limit for the parties.

2. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Each party's written submission shall not exceed five pages, excluding supporting documents. Any documents so provided shall also be provided to the opposing party and shall be delivered to the Commission no later than five business days prior to the scheduled hearing. Upon mutual consent of the Complainant(s), Respondent(s), and the Executive Director, a response may be distributed by e-mail. Commissioners may question each party or any other person providing testimony regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.

3. If either party fails to appear and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence.

**D. Deliberations and Findings.**

1. The Commission shall deliberate in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.

2. To determine that a violation of the Sunshine Ordinance did not occur, the Commission must conclude that, based on a preponderance of the evidence, the Respondent did not commit a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case.

3. The votes of at least three Commissioners are required to make a finding that a Respondent has not committed a violation of the Sunshine Ordinance. The finding that a Respondent did or did not commit a violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

**E. Ethics Commission Orders.**

1. If the Commission finds that a Respondent committed a violation of the Sunshine Ordinance, the Commission may issue orders requiring any or all of the following:

a. the Respondent(s) to cease and desist the violation and/or produce the public record(s); and/or

b. the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent(s) violated the Sunshine Ordinance; and/or

c. The Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority of the violation.



2. After making its decision, the Commission will instruct staff to prepare a written order reflecting the Commission's findings. The Chairperson shall be authorized to approve and sign the Commission's written order on behalf of the full Commission.

3. After issuing an order or instructing the Executive Director to act, or upon a finding of no violation, the Commission will take no further action on the matter.

**F. Public Announcement.**

Once the Commission determines that the Respondent did or did not commit a violation of the Sunshine Ordinance, the Commission will publicly announce this conclusion. The Commission's announcement may, but need not, include findings of law and fact.

## CHAPTER THREE

### **I. COMPLAINTS ALLEGING WILLFUL VIOLATIONS OF THE SUNSHINE ORDINANCE BY ELECTED OFFICIALS OR DEPARTMENT HEADS** **OR** **COMPLAINTS FILED DIRECTLY WITH THE ETHICS COMMISSION ALLEGING VIOLATIONS OF THE SUNSHINE ORDINANCE.**

#### **A. Matters heard under this Chapter.**

1. Pursuant to Sunshine Ordinance, section 67.34, the Ethics Commission shall handle complaints alleging violations of the Sunshine Ordinance by an elected official or department head.

2. Pursuant to Sunshine Ordinance, section 67.35(d), if the District Attorney and/or Attorney General take no action for 40 days after receiving notification of a custodian's failure to comply with an order made pursuant to Sunshine Ordinance section 67.21(d) or (e), then the person who made the public record request may file a complaint directly with the Ethics Commission relating to that failure to comply.

3. Ethics Commission staff may initiate a complaint to allege a violation of the Sunshine Ordinance against any City officer or City employee.

4. This Chapter will govern:

a. referrals alleging willful violations of the Sunshine Ordinance against an elected official or department head, and

b. complaints initiated under subsections A.2 or A.3 alleging violations of the Sunshine Ordinance by any City officer or employee.

5. Any referral that does not allege a willful violation of the Sunshine Ordinance against an elected official or a department head shall be handled pursuant to Chapter Two of these regulations.

#### **B. Scheduling of Hearing.**

1. When the Executive Director receives a referral alleging a willful violation of the Sunshine Ordinance against an elected official or a department head, or when the Executive Director receives a complaint filed under subsection A.2, or when staff initiates a complaint under subsection A.3, the Executive Director shall, within 15 business days of the conclusion of his or her investigation, schedule a public hearing at the next regular meeting of the Commission, unless impracticable, provided that the hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.

2. Within 15 business days of the conclusion of his or her investigation, the Executive Director shall issue a written notice and his or her report and recommendation pursuant to Chapter Three, section II.C, to each Commission member, each Respondent, and each Complainant, including the date, time and location of the hearing.

3. In the case of a referral, the Executive Director also shall provide a courtesy notice and a copy of the report and recommendation to the referring body.

## **II. INVESTIGATION AND RECOMMENDATION**

### **A. Factual Investigation.**

Upon receipt of a complaint, the Executive Director shall conduct a factual investigation. The Executive Director's investigation may include, but shall not be limited to, interviews of the Respondent(s) and any witnesses, as well as the review of documentary and other evidence. The investigation shall be concluded within 30 days following the Executive Director's receipt of the complaint. The Executive Director may extend the time for good cause, including but not limited to: staffing levels; the number of other pending complaints under these Regulations or the Ethics Commission Regulations for Investigations and Enforcement Proceedings; other Ethics Commission proceedings; other staffing needs associated with pending campaigns; or the cooperation of witnesses, Complainants or Respondents. If the Executive Director extends the time for the investigation to conclude, his or her reasons for the extension shall be included in the report to the Ethics Commission.

### **B. Subpoenas.**

During an investigation, the Executive Director may compel by subpoena the testimony of witnesses and the production of documents relevant to the investigation.

### **C. Report and Recommendation.**

1. After the Executive Director has completed his or her investigation, the Executive Director shall prepare a written report and recommendation summarizing his or her factual and legal findings. The recommendation shall contain a summary of the relevant legal provisions and the evidence gathered through the Commission's investigation. To support the report and recommendation, the Executive Director may submit evidence through declaration. The report and recommendation shall not exceed ten pages excluding attachments.

2. The report shall recommend one of the following:

a. that Respondent(s) willfully violated the Sunshine Ordinance;

b. that Respondent(s) violated the Sunshine Ordinance but the violation was not willful; or

c. that Respondent(s) did not violate the Sunshine Ordinance.

**D. Response to the Report and Recommendation.**

1. Each Complainant and Respondent may submit a written response to the Director's report and recommendation. The response may contain legal arguments, a summary of evidence, and any mitigating or aggravating information. In support of the response, each Complainant and Respondent may submit evidence through declaration. The response shall not exceed ten pages excluding attachments.

2. If any Complainant or Respondent submits a response, he or she must deliver the response to all parties no later than five business days prior to the date of the hearing. The Complainant or Respondent must deliver eight copies of the response to the Executive Director, who must then immediately distribute copies of the response(s) to the Commission and any other Complainant or Respondent. Upon mutual consent of the Complainant(s), Respondent(s), and the Executive Director, a response may be distributed by e-mail.

**III. PUBLIC HEARING**

**A. General Rules and Procedures.**

1. The hearing shall be open to the public.

2. Each Complainant and Respondent may speak on his or her own behalf, subject to the following time limits: Complainant shall be permitted a ten-minute statement; Respondent shall be permitted a ten-minute statement; and Complainant shall be permitted a five-minute rebuttal. At his or her discretion, the Commission Chairperson may allow additional testimony and may extend the time limit for the parties.

3. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Commissioners may question each party regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.

4. If either party fails to appear and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, Section I.E, then the Commission may make a decision in the party's absence.

5. Except when a complaint is staff-initiated or initiated pursuant to section 67.35(d), the Executive Director's role at the hearing will be limited to providing the report containing the legal and factual basis for his or her recommendation to the Commission and to respond to questions from the Commissioners.

**B. Deliberations and Findings.**

1. The Commission shall deliberate in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.
2. In determining whether a violation of the Sunshine Ordinance occurred, the Commission must conclude that, based on a preponderance of the evidence, the Respondent committed a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case.
3. The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance. The finding of a willful violation or non-willful violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

**C. Ethics Commission Orders.**

1. If the Commission finds that an elected official or a department head willfully violated the Sunshine Ordinance, the Commission shall so inform the Respondent's appointing authority, or the Mayor if Respondent is an elected official. In addition, the Commission may issue orders requiring any or all of the following if it finds that an elected official, a department head, or any City officer or City employee committed a violation of the Sunshine Ordinance:
  - a. the Respondent to cease and desist the violation and/or produce the public record(s); and/or
  - b. the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent violated the Sunshine Ordinance; and/or
  - c. the Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority, or the Mayor if the Respondent is an elected official, of the violation.
2. After making its decision, the Commission will instruct staff to prepare a written order reflecting the Commission's findings. The Chairperson shall be authorized to approve and sign the Commission's written order on behalf of the full Commission.
3. After issuing an order or instructing the Executive Director to act, the Commission will take no further action on the matter.

**D. Finding of No Violation.**

If the Commission determines that there is insufficient evidence to establish that the Respondent has committed a violation of the Sunshine Ordinance, the Commission shall publicly announce this fact. The Commission's announcement may, but need not, include findings of law and fact. Thereafter, the Commission will take no further action on the matter.

## CHAPTER FOUR

### **I. MISCELLANEOUS PROVISIONS**

#### **A. Ex Parte Communications.**

Once a complaint is filed with the Commission, no Commissioner shall engage in oral or written communications outside of a Commission meeting regarding the merits of the complaint with the Commission's staff, the Respondent(s), the Complainant(s), any member of the Task Force, the Supervisor of Records, any member of the public, or any person communicating on behalf of the Respondent(s), Complainant(s), the Supervisor of Records, or any member of the Task Force, except for communications, such as scheduling matters, generally conducted between a court and a party appearing before that court.

#### **B. Access to Complaints and Related Documents and Deliberations.**

Complaints, investigative files and information contained therein, shall be disclosed as necessary to the conduct of an investigation or as required by the California Public Records Act or the San Francisco Sunshine Ordinance. In order to guarantee the integrity of the investigation, internal notes taken by the Executive Director or his or her staff regarding complaints shall not be disclosed until the Commission has issued its final decision following the hearing.

#### **C. Oaths and Affirmations.**

The Commission may administer oaths and affirmations.

#### **D. Selection of Designee by the Executive Director.**

Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the Executive Director shall notify the Commission and the public of the designation no later than the next business day.

#### **E. Extensions of Time and Continuances.**

1. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. The Commission Chairperson shall have the discretion to consider untimely requests. The Commission Chairperson shall approve or deny the request within five business days of the submission of the request. The Commission Chairperson may grant the request upon a showing of good cause.

2. The Commission or the Commission Chairperson may reschedule a hearing at their discretion for good cause.

At any time a hearing is placed on an agenda regarding a matter under Chapter II or III of these Regulations, four or more members must be in attendance. Otherwise, the hearing shall be continued to the next regular Ethics Commission meeting, unless impracticable.

**F. Place of Delivery.**

1. Whenever these Regulations require delivery to the Commission, its members, or the Executive Director, delivery shall be effected at the Commission office.
2. Whenever these Regulations require delivery to a Respondent or Complainant, delivery shall be effective and sufficient if made by U.S. mail, personal delivery or any other means of delivery agreed upon by the parties under Chapter One, section II, subsection K, to an address reasonably calculated to give notice to and reach the Respondent or Complainant.
3. Delivery is effective upon the date of delivery, not the date of receipt.
4. Delivery of documents to the Commission may be conducted via electronic mail after a written request is made and approved by the Executive Director.

**G. Page Limitations and Format Requirements.**

Whenever these Regulations impose a page limitation, a “page” means one side of an 8½ inch by 11 inch page, with margins of at least one inch at the left, right, top and bottom of the page, typewritten and double-spaced in no smaller than 12 point type. Each page and any attachments shall be consecutively numbered.

**H. Conclusion of Hearing.**

For the purposes of these Regulations, a hearing concludes on the date on which the Commission announces its decision.

**I. Complaints alleging both Sunshine Violations and Violations Handled Under the Ethics Commission’s Regulations for Investigations and Enforcement Proceedings.**

If a complaint alleges both violations of the Sunshine Ordinance and violations handled under the Ethics Commission’s Regulations for Investigations and Enforcement Proceedings, the allegations involving violations of the Sunshine Ordinance shall be handled separately under these Regulations. Staff shall initiate a complaint of the alleged violations of the Sunshine Ordinance under Chapter Three, Section I.A.3 of these Regulations.



**J. Certification by participating Commissioner if he or she did not attend proceedings held under Chapter II or III in their entirety.**

Each Commissioner who participates in a decision, but who did not attend the hearing in its entirety, shall certify on the record that he or she personally heard the testimony (either in person or by listening to a tape or recording of the proceeding) and reviewed the evidence, or otherwise reviewed the entire record of the proceedings.

**II. SEVERABILITY**

If any provision of these Regulations, or the application thereof, to any person or circumstance, is held invalid, the validity of the remainder of the Regulations and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

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# **CHAPTER 67: THE SAN FRANCISCO SUNSHINE ORDINANCE OF 1999**

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**Article**

- I. IN GENERAL**
- II. PUBLIC ACCESS TO MEETINGS**
- III. PUBLIC INFORMATION AND PUBLIC RECORDS**
- IV. POLICY IMPLEMENTATION**

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## **ARTICLE I: IN GENERAL**

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- Sec. 67.1. Findings and Purpose.
- Sec. 67.2. Citation.

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### **SEC. 67.1. FINDINGS AND PURPOSE.**

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

- (a) Government's duty is to serve the public, reaching its decisions in full view of the public.
- (b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.
- (c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.
- (d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to

information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.

(e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force, can protect the public's interest in open government.

(f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.

(g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.2. CITATION.**

This Chapter may be cited as the San Francisco Sunshine Ordinance.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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# **ARTICLE II: PUBLIC ACCESS TO MEETINGS**

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- Sec. 67.3. Definitions.
  - Sec. 67.4. Passive Meetings.
  - Sec. 67.5. Meetings To Be Open and Public; Application of Brown Act.
  - Sec. 67.6. Conduct of Business; Time and Place For Meetings.
  - Sec. 67.7. Agenda Requirements; Regular Meetings.
  - Sec. 67.7-1. Public Notice Requirements.
  - Sec. 67.8. Agenda Disclosures: Closed Sessions.
  - Sec. 67.8-1. Additional Requirements for Closed Sessions.
  - Sec. 67.9. Agendas and Related Materials: Public Records.
  - Sec. 67.10. Closed Sessions: Permitted Topics.
  - Sec. 67.11. Statement of Reasons For Closed Sessions.
  - Sec. 67.12. Disclosure of Closed Session Discussions and Actions.
  - Sec. 67.13. Barriers to Attendance Prohibited.
  - Sec. 67.14. Video and Audio Recording, Filming and Still Photography.
  - Sec. 67.15. Public Testimony.
  - Sec. 67.16. Minutes.
  - Sec. 67.17. Public Comment By Members of Policy Bodies.
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## **SEC. 67.3. DEFINITIONS.**

Whenever in this Article the following words or phrases are used, they shall have the following meanings:

(a) "City" shall mean the City and County of San Francisco.

(b) "Meeting" shall mean any of the following:

(1) A congregation of a majority of the members of a policy body at the same time and place;

(2) A series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of members has become involved in such gatherings; or

(3) Any other use of personal intermediaries or communications media that could permit a majority of the members of a policy body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereupon.

(4) "Meeting" shall not include any of the following:

(A) Individual contacts or conversations between a member of a policy body and another person that do not convey to the member the views or positions of other members upon the subject matter of the contact or conversation and in which the member does not solicit or encourage the restatement of the views of the other members;

(B) The attendance of a majority of the members of a policy body at a regional, statewide or national conference, or at a meeting organized to address a topic of local community concern and open to the public, provided that a majority of the members refrains from using the occasion to collectively discuss the topic of the gathering or any other business within the subject matter jurisdiction of the City; or

(C) The attendance of a majority of the members of a policy body at a purely social, recreational or ceremonial occasion other than one sponsored or organized by or for the policy body itself, provided that a majority of the members refrains from using the occasion to discuss any business within the subject matter jurisdiction of this body. A meal gathering of a policy body before, during or after a business meeting of the body is part of that meeting and shall be conducted only under circumstances that permit public access to hear and observe the discussion of members. Such meetings shall not be conducted in restaurants or other accommodations where public access is possible only in consideration of making a purchase or some other payment of value.

(C-1)\* The attendance of a majority of the members of a policy body at an open and noticed meeting of a standing committee of that body, provided that the members of the policy body who are not members of the standing committee attend only as observers.

(D) Proceedings of the Department of Social Services Child Welfare Placement and Review Committee or similar committees which exist to consider confidential information and make decisions regarding Department of Social Services clients.

(c) "Passive meeting body" shall mean:

(1) Advisory committees created by the initiative of a member of a policy body, the Mayor, or a department head;

(2) Any group that meets to discuss with or advise the Mayor or any Department Head on

fiscal, economic, or policy issues;

(3) Social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited.

(4) "Passive meeting body" shall not include a committee that consists solely of employees of the City and County of San Francisco created by the initiative of a member of a policy body, the Mayor, or a department head;

(5) Notwithstanding the provisions of paragraph (4) above, "Passive meeting body" shall include a committee that consists solely of employees of the City and County of San Francisco when such committee is reviewing, developing, modifying, or creating City policies or procedures relating to the public health, safety, or welfare or relating to services for the homeless;

(d) "Policy Body" shall mean:

(1) The Board of Supervisors;

(2) Any other board or commission enumerated in the Charter;

(3) Any board, commission, committee, or other body created by ordinance or resolution of the Board of Supervisors;

(4) Any advisory board, commission, committee or body, created by the initiative of a policy body;

(5) Any standing committee of a policy body irrespective of its composition.

(6) "Policy Body" shall not include a committee which consists solely of employees of the City and County of San Francisco, unless such committee was established by Charter or by ordinance or resolution of the Board of Supervisors.

(7) Any advisory board, commission, committee, or council created by a federal, State, or local grant whose members are appointed by City officials, employees or agents.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 129-98, App. 4/17/98; Proposition G, 11/2/99)

***Editor's note***

*\*The drafters of Proposition G (November 2, 1999) inadvertently omitted section 67.3(b)(4)(C-1), formerly section 67.3(b)(4)(D), from the text of the ordinance submitted to the voters.*

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## **SEC. 67.4. PASSIVE MEETINGS.**

(a) All gatherings of passive meeting bodies shall be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur.

(1) Such gatherings need not be formally noticed, except on the City's website whenever possible, although the time, place and nature of the gathering shall be disclosed upon inquiry by a member of the public, and any agenda actually prepared for the gathering shall be accessible to such inquirers as a public record.

(2) Such gatherings need not be conducted in any particular space for the accommodation of members of the public, although members of the public shall be permitted to observe on a space available basis consistent with legal and practical restrictions on occupancy.

(3) Such gatherings of a business nature need not provide opportunities for comment by members of the public, although the person presiding may, in his or her discretion, entertain such questions or comments from spectators as may be relevant to the business of the gathering.

(4) Such gatherings of a social or ceremonial nature need not provide refreshments to spectators.

(5) Gatherings subject to this subsection include the following: advisory committees or other multimember bodies created in writing or by the initiative of, or otherwise primarily formed or existing to serve as a non-governmental advisor to, a member of a policy body, the Mayor, the City Administrator, a department head, or any elective officer, and social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited. This subsection shall not apply to a committee which consists solely of employees of the City and County of San Francisco.

(6) Gatherings defined in subdivision (5) may hold closed sessions under circumstances allowed by this Article.

(b) To the extent not inconsistent with State or federal law, a policy body shall include in any contract with an entity that owns, operates or manages any property in which the City has or will have an ownership interest, including a mortgage, and on which the entity performs a government function related to the furtherance of health, safety or welfare, a requirement that any meeting of the governing board of the entity to address any matter relating to the property or its government related activities on the property, or performance under the contract or grant, be conducted as provided in Subdivision (a) of this section. Records made available to the governing board relating to such matters shall be likewise available to the public, at a cost not to exceed the actual cost up to 10 cents per page, or at a higher actual cost as demonstrated in writing to such governing board.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

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## **SEC. 67.5. MEETINGS TO BE OPEN AND PUBLIC; APPLICATION OF BROWN ACT.**

All meetings of any policy body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et. seq.) and of this Article. In case of inconsistent requirements under the Brown Act and this Article, the requirement which would result in greater or more expedited public access shall apply.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.6. CONDUCT OF BUSINESS; TIME AND PLACE FOR MEETINGS.**

(a) Each policy body, except for advisory bodies, shall establish by resolution or motion the time and place for holding regular meetings.

(b) Unless otherwise required by state or federal law or necessary to inspect real property or personal property which cannot be conveniently brought within the territory of the City and County of San Francisco or to meet with residents residing on property owned by the City, or to meet with residents of another jurisdiction to discuss actions of the policy body that affect those residents, all meetings of its policy bodies shall be held within the City and County of San Francisco.



(c) If a regular meeting would otherwise fall on a holiday, it shall instead be held on the next business day, unless otherwise rescheduled in advance.

(d) If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet at the regular meeting place, meetings may be held for the duration of the emergency at some other place specified by the policy body. The change of meeting site shall be announced, by the most rapid means of communication available at the time, in a notice to the local media who have requested written notice of special meetings pursuant to Government Code Section 54956. Reasonable attempts shall be made to contact others regarding the change in meeting location.

(e) Meetings of passive meeting bodies as specified in Section 67.6(d)(4) of this article shall be preceded by notice delivered personally or by mail, e-mail, or facsimile as reasonably requested at least 72 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting. If the advisory body elects to hold regular meetings, it shall provide by bylaws, or whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. In such case, no notice of regular meetings, other than the posting of an agenda pursuant to Section 67.7 of this article in the place used by the policy body which it advises, is required.

(f) Special meetings of any policy body, including advisory bodies that choose to establish regular meeting times, may be called at any time by the presiding officer thereof or by a majority of the members thereof, by delivering personally or by mail written notice to each member of such policy body and the local media who have requested written notice of special meetings in writing. Such notice of a special meeting shall be delivered as described in (e) at least 72 hours before the time of such meeting as specified in the notice. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the presiding officer or secretary of the body or commission a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Each special meeting shall be held at the regular meeting place of the policy body except that the policy body may designate an alternate meeting place provided that such alternate location is specified in the notice of the special meeting; further provided that the notice of the special meeting shall be given at least 15 days prior to said special meeting being held at an alternate location. This provision shall not apply where the alternative meeting location is located within the same building as the regular meeting place.

(g) If a meeting must be canceled, continued or rescheduled for any reason, notice of such change shall be provided to the public as soon as is reasonably possible, including posting of a cancellation notice in the same manner as described in Section 67.7(c), and mailed notice if sufficient time permits.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.7. AGENDA REQUIREMENTS; REGULAR MEETINGS.**

(a) At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet site at least 72 hours before a regular meeting.

(b) A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.

(c) The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

(d) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.

(e) Notwithstanding Subdivision (d), the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:

(1) Upon a determination by a majority vote of the body that an accident, natural disaster or work force disruption poses a threat to public health and safety.

(2) Upon a good faith, reasonable determination by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that (A) the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or relates to a purely commendatory action, and (B) that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was on an agenda posted pursuant to subdivision (a) for a prior meeting of the body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(f) Each board and commission enumerated in the Charter shall ensure that agendas for regular and special meetings are made available to speech and hearing impaired persons through telecommunications devices for the deaf, telecommunications relay services or equivalent systems, and, upon request, to sight impaired persons through Braille or enlarged type.

(g) Each policy body shall ensure that notices and agendas for regular and special meetings shall include the following notice:

KNOW YOUR RIGHTS UNDER  
THE SUNSHINE ORDINANCE  
(Chapter 67 of the  
San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public.

Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.



FOR MORE INFORMATION  
ON YOUR RIGHTS UNDER THE SUNSHINE  
ORDINANCE OR TO REPORT A VIOLATION  
OF THE ORDINANCE, CONTACT THE  
SUNSHINE ORDINANCE TASK FORCE.

(h) Each agenda of a policy body covered by this Sunshine Ordinance shall include the address, area code and phone number, fax number, e-mail address, and a contact person's name for the Sunshine Ordinance Task Force. Information on how to obtain a free copy of the Sunshine Ordinance shall be included on each agenda.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 185-96, App. 5/8/96; Proposition G, 11/2/99)

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## **SEC. 67.7-1. PUBLIC NOTICE REQUIREMENTS.**

(a) Any public notice that is mailed, posted or published by a City department, board, agency or commission to residents residing within a specific area to inform those residents of a matter that may impact their property or that neighborhood area, shall be brief, concise and written in plain, easily understood English.

(b) The notice should inform the residents of the proposal or planned activity, the length of time planned for the activity, the effect of the proposal or activity, and a telephone contact for residents who have questions.

(c) If the notice informs the public of a public meeting or hearing, then the notice shall state that persons who are unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing, that these comments will be made a part of the official public record, and that the comments will be brought to the attention of the person or persons conducting the public meeting or hearing. The notice should also state the name and address of the person or persons to whom those written comments should be submitted.

(Added by Ord. 185-96, App. 5/8/96; amended by Proposition G, 11/2/99)

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## **SEC. 67.8. AGENDA DISCLOSURES: CLOSED SESSIONS.**

(a) In addition to the brief general description of items to be discussed or acted upon in open and public session, the agenda posted pursuant to Government Code Section 54954.2, any mailed notice given pursuant to Government Code Section 54954.1, and any call and notice delivered to the local media and posted pursuant to Government Code Section 54956 shall specify and disclose the nature of any closed sessions by providing all of the following information:

(1) With respect to a closed session held pursuant to Government Code Section 54956.7:

LICENSE/PERMIT DETERMINATION:

\_\_\_\_\_ applicant(s)

The space shall be used to specify the number of persons whose applications are to be reviewed.

(2) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.8:

CONFERENCE WITH REAL PROPERTY  
NEGOTIATOR

Property:

Person(s) negotiating:

Under negotiation:

Price: \_\_\_\_\_ Terms of payment: \_\_\_\_\_ Both: \_\_\_\_\_

The space under "Property" shall be used to list an address, including cross streets where applicable, or other description or name which permits a reasonably ready identification of each parcel or structure subject to negotiation. The space under "Person(s) negotiating" shall be used to identify the person or persons with whom negotiations concerning that property are in progress. The spaces under "Under negotiation" shall be checked off as applicable to indicate which issues are to be discussed.

(3) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.9, either:

CONFERENCE WITH LEGAL COUNSEL

Existing litigation:

\_\_\_\_\_ Unspecified to protect service of process

\_\_\_\_\_ Unspecified to protect settlement posture

or:

CONFERENCE WITH LEGAL COUNSEL

Anticipated litigation: \_\_\_\_\_ As defendant \_\_\_\_\_ As plaintiff

The space under "Existing litigation" shall be used to specifically identify a case under discussion pursuant to subdivision (a) of Government Code Section 54956.9, including the case name, court, and case number, unless the identification would jeopardize the City's ability to effectuate service of process upon one or more unserved parties, in which instance the space in the next succeeding line shall be checked, or unless the identification would jeopardize the City's ability to conclude existing settlement negotiations to its advantage, in which instance the space in the next succeeding line shall be checked. If the closed session is called pursuant to subdivision (b) or (c) of Section 54956.9, the appropriate space shall be checked under "Anticipated litigation" to indicate the City's anticipated position as defendant or plaintiff respectively. If more than one instance of anticipated litigation is to be reviewed, space may be saved by entering the number of separate instances in the "As defendant" or "As plaintiff" spaces or both as appropriate.

(4) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957, either:

THREAT TO PUBLIC SERVICES OR FACILITIES

Name, title and agency of law enforcement officer(s) to be conferred with:

or:

PUBLIC EMPLOYEE APPOINTMENT/HIRING

Title/description of position(s) to be filled:

PUBLIC EMPLOYEE PERFORMANCE  
EVALUATION

Position and, in the case of a routine evaluation, name of employee(s) being evaluated:

or:

**PUBLIC EMPLOYEE DISMISSAL**

Number of employees affected:

or:

(5) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957.6, either:

**CONFERENCE WITH NEGOTIATOR**

**COLLECTIVE BARGAINING**

Name and title of City's negotiator:

Organization(s) representing:

- \_\_\_\_\_ Police officers, firefighters and airport police
- \_\_\_\_\_ Transit Workers
- \_\_\_\_\_ Nurses
- \_\_\_\_\_ Miscellaneous Employees

Anticipated issue(s) under negotiation:

- \_\_\_\_\_ Wages
- \_\_\_\_\_ Hours
- \_\_\_\_\_ Benefits
- \_\_\_\_\_ Working Conditions
- \_\_\_\_\_ Other (specify if known)
- \_\_\_\_\_ All

Where renegotiating a memorandum of understanding or negotiating a successor memorandum of understanding, the name of the memorandum of understanding:

In case of multiple items of business under the same category, lines may be added and the location of information may be reformatted to eliminate unnecessary duplication and space, so long as the relationship of information concerning the same item is reasonably clear to the reader. As an alternative to the inclusion of lengthy lists of names or other information in the agenda, or as a means of adding items to an earlier completed agenda, the agenda may incorporate by reference separately prepared documents containing the required information, so long as copies of those documents are posted adjacent to the agenda within the time periods required by Government Code Sections 54954.2 and 54956 and provided with any mailed or delivered notices required by Sections 54954.1 or 54956.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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**SEC. 67.8-1. ADDITIONAL REQUIREMENTS FOR CLOSED SESSIONS.**

(a) All closed sessions of any policy body covered by this Ordinance shall be either audio recorded or audio and video recorded in their entirety and all such recordings shall be retained for at least TEN years, or permanently where technologically and economically feasible. Closed session recordings shall be made available whenever all rationales for closing the session are no longer applicable. Recordings of closed sessions of a policy body covered by this Ordinance, wherein the justification for the closed session is due to "anticipated litigation" shall be released to the public in accordance with any of the following provisions: TWO years after the meeting if no litigation is filed; UPON EXPIRATION of the statute of limitations for the anticipated litigation if no litigation

is filed; as soon as the controversy leading to anticipated litigation is settled or concluded.

(b) Each agenda item for a policy body covered by this ordinance that involve existing litigation shall identify the court, case number, and date the case was filed on the written agenda. For each agenda item for a group covered by this ordinance that involves anticipated litigation, the City Attorney's Office or the policy body shall disclose at any time requested and to any member of the public whether such anticipated litigation developed into litigation and shall identify the court, case number, and date the case was filed.

(Added by Proposition G, 11/2/99)

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## **SEC. 67.9. AGENDAS AND RELATED MATERIALS: PUBLIC RECORDS.**

(a) Agendas of meetings and any other documents on file with the clerk of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public. To the extent possible, such documents shall also be made available through the policy body's Internet site. However, this disclosure need not include any material exempt from public disclosure under this ordinance.

(b) Records which are subject to disclosure under subdivision (a) and which are intended for distribution to a policy body prior to commencement of a public meeting shall be made available for public inspection and copying upon request prior to commencement of such meeting, whether or not actually distributed to or received by the body at the time of the request.

(c) Records which are subject to disclosure under subdivision (a) and which are distributed during a public meeting but prior to commencement of their discussion shall be made available for public inspection prior to commencement of, and during, their discussion.

(d) Records which are subject to disclosure under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.

(e) A policy body may charge a duplication fee of one cent per page for a copy of a public record prepared for consideration at a public meeting, unless a special fee has been established pursuant to the procedure set forth in Section 67.28(d). Neither this section nor the California Public Records Act (Government Code sections 6250 et seq.) shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, whether or not distributed to a policy body.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.10. CLOSED SESSIONS: PERMITTED TOPICS.**

A policy body may, but is not required to, hold closed sessions:

(a) With the Attorney General, District Attorney, Sheriff, or Chief of Police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities.

(b) To consider the appointment, employment, evaluation of performance, or dismissal of a City employee, if the policy body has the authority to appoint, employ, or dismiss the employee, or to

hear complaints or charges brought against the employee by another person or employee unless the employee complained of requests a public hearing. The body may exclude from any such public meeting, and shall exclude from any such closed meeting, during the comments of a complainant, any or all other complainants in the matter. The term "employee" as used in this section shall not include any elected official, member of a policy body or applicant for such a position, or person providing services to the City as an independent contractor or the employee thereof, including but not limited to independent attorneys or law firms providing legal services to the City for a fee rather than a salary.

(c) Notwithstanding section (b), an Executive Compensation Committee established pursuant to a Memorandum of Understanding with the Municipal Executives Association may meet in closed session when evaluating the performance of an individual officer or employee subject to that Memorandum of Understanding or when establishing performance goals for such an officer or employee where the setting of such goals requires discussion of that individual's performance.

(d) Based on advice of its legal counsel, and on a motion and vote in open session to assert the attorney-client privilege, to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would likely and unavoidably prejudice the position of the City in that litigation. Litigation shall be considered pending when any of the following circumstances exist:

(1) An adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator, to which the City is a party, has been initiated formally; or,

(2) A point has been reached where, in the opinion of the policy body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the City, or the body is meeting only to decide whether a closed session is authorized pursuant to that advice or, based on those facts and circumstances, the body has decided to initiate or is deciding whether to initiate litigation.

(3) A closed session may not be held under this section to consider the qualifications or engagement of an independent contract attorney or law firm, for litigation services or otherwise.

(e) With the City's designated representatives regarding matters within the scope of collective bargaining or meeting and conferring with public employee organizations when a policy body has authority over such matters.

(1) Such closed sessions shall be for the purpose of reviewing the City's position and instructing its designated representatives and may take place solely prior to and during active consultations and discussions between the City's designated representatives and the representatives of employee organizations or the unrepresented employees. A policy body shall not discuss compensation or other contractual matters in closed session with one or more employees directly interested in the outcome of the negotiations.

(2) In addition to the closed sessions authorized by subsection 67.10(e)(1), a policy body subject to Government Code Section 3501 may hold closed sessions with its designated representatives on mandatory subjects within the scope of representation of its represented employees, as determined pursuant to Section 3504.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 37-98, App. 1/23/98; Proposition G, 11/2/99)

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## **SEC. 67.11. STATEMENT OF REASONS FOR CLOSED SESSIONS.**



Prior to any closed session, a policy body shall state the general reason or reasons for the closed session, and shall cite the statutory authority, including the specific section and subdivision, or other legal authority under which the session is being held. In the closed session, the policy body may consider only those matters covered in its statement. In the case of regular and special meetings, the statement shall be made in the form of the agenda disclosures and specifications required by Section 67.8 of this Article. In the case of adjourned and continued meetings, the statement shall be made with the same disclosures and specifications required by Section 67.8 of this Article, as part of the notice provided for the meeting.

In the case of an item added to the agenda as a matter of urgent necessity, the statement shall be made prior to the determination of urgency and with the same disclosures and specifications as if the item had been included in the agenda pursuant to Section 67.8 of this Article. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.12. DISCLOSURE OF CLOSED SESSION DISCUSSIONS AND ACTIONS.**

(a) After every closed session, a policy body may in its discretion and in the public interest, disclose to the public any portion of its discussion that is not confidential under federal or state law, the Charter, or non-waivable privilege. The body shall, by motion and vote in open session, elect either to disclose no information or to disclose the information that a majority deems to be in the public interest. The disclosure shall be made through the presiding officer of the body or such other person, present in the closed session, whom he or she designates to convey the information.

(b) A policy body shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

(1) Real Property Negotiations: Approval given to a policy body's negotiator concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the agreement is final. If its own approval renders the agreement final, the policy body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval rests with another party to the negotiations, the body shall disclose the fact of that approval, the substance of the agreement and the body's vote or votes thereon upon inquiry by any person, as soon as the other party or its agent has informed the body of its approval. If notwithstanding the final approval there are conditions precedent to the final consummation of the transaction, or there are multiple contiguous or closely located properties that are being considered for acquisition, the document referred to in Subdivision (b) of this Section need not be disclosed until the condition has been satisfied or the agreement has been reached with respect to all the properties, or both.

(2) Litigation: Direction or approval given to the body's legal counsel to prosecute, defend or seek or refrain from seeking appellate review or relief, or to otherwise enter as a party, intervenor or amicus curiae in any form of litigation as the result of a consultation pursuant to Government Code Section 54956.9 shall be reported in open session as soon as given, or at the first meeting after an adverse party has been served in the matter if immediate disclosure of the City's intentions would be contrary to the public interest. The report shall identify the adverse party or parties, any co-parties with the City, any existing claim or order to be defended against or any factual circumstances or contractual dispute giving rise to the City's complaint, petition or other litigation initiative.

(3) Settlement: A policy body shall neither solicit nor agree to any term in a settlement which

would preclude the release of the text of the settlement itself and any related documentation communicated to or received from the adverse party or parties. Any written settlement agreement and any documents attached to or referenced in the settlement agreement shall be made publicly available at least 10 calendar days before the meeting of the policy body at which the settlement is to be approved to the extent that the settlement would commit the City or a department thereof to adopting, modifying, or discontinuing an existing policy, practice or program or otherwise acting other than to pay an amount of money less than \$50,000. The agenda for any meeting in which a settlement subject to this Section is discussed shall identify the names of the parties, the case number, the court, and the material terms of the settlement. Where the disclosure of documents in a litigation matter that has been settled could be detrimental to the City's interest in pending litigation arising from the same facts or incident and involving a party not a party to or otherwise aware of the settlement, the documents required to be disclosed by Subdivision (b) of this Section need not be disclosed until the other case is settled or otherwise finally concluded.

(4) Employee Actions: Action taken to appoint, employ, dismiss, transfer or accept the resignation of a public employee in closed session pursuant to Government Code Section 54957 shall be reported immediately in a manner that names the employee, the action taken and position affected and, in the case of dismissal for a violation of law or of the policy of the City, the reason for dismissal. "Dismissal" within the meaning of this ordinance includes any termination of employment at the will of the employer rather than of the employee, however characterized. The proposed terms of any separation agreement shall be immediately disclosed as soon as presented to the body, and its final terms shall be immediately disclosed upon approval by the body.

(5) Collective Bargaining: Any collectively bargained agreement shall be made publicly available at least 15 calendar days before the meeting of the policy body to which the agreement is to be reported.

(c) Reports required to be made immediately may be made orally or in writing, but shall be supported by copies of any contracts, settlement agreements, or other documents related to the transaction that were finally approved or adopted in the closed session and that embody the information required to be disclosed immediately shall be provided to any person who has made a written request regarding that item following the posting of the agenda, or who has made a standing request for all such documentation as part of a request for notice of meetings pursuant to Government Code Sections 54954.1 or 54956.

(d) A written summary of the information required to be immediately reported pursuant to this Section, or documents embodying that information, shall be posted by the close of business on the next business day following the meeting, in the place where the meeting agendas of the body are posted.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.13. BARRIERS TO ATTENDANCE PROHIBITED.**

(a) No policy body shall conduct any meeting, conference or other function in any facility that excludes persons on the basis of actual or presumed class identity or characteristics, or which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever the Board of Supervisors, a board or commission enumerated in the charter, or any committee thereof anticipates that the number of persons attending the meeting will exceed the legal capacity of the meeting room, any public address system used to amplify sound in the meeting room shall be extended by supplementary speakers to permit the overflow audience to listen to the proceedings in an adjacent room or

passageway, unless such supplementary speakers would disrupt the operation of a City office.

(b) Each board and commission enumerated in the charter shall provide sign language interpreters or note-takers at each regular meeting, provided that a request for such services is communicated to the secretary or clerk of the board or commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline shall be 4 p.m. of the last business day of the preceding week.

(c) Each board and commission enumerated in the charter shall ensure that accessible seating for persons with disabilities, including those using wheelchairs, is made available for each regular and special meeting.

(d) Each board and commission enumerated in the charter shall include on the agenda for each regular and special meeting the following statement: "In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals."

(e) The Board of Supervisors shall seek to provide translators at each of its regular meetings and all meetings of its committees for each language requested, where the translation is necessary to enable San Francisco residents with limited English proficiency to participate in the proceedings provided that a request for such translation services is communicated to the Clerk of the Board of Supervisors at least 48 hours before the meeting. For meetings on a Monday or a Tuesday, the request must be made by noon of the last business day of the preceding week. The Clerk of the Board of Supervisors shall first solicit volunteers from the ranks of City employees and/or from the community to serve as translators. If volunteers are not available the Clerk of the Board of Supervisors may next solicit translators from non-profit agencies, which may be compensated. If these options do not provide the necessary translation services, the Clerk may employ professional translators. The unavailability of a translator shall not affect the ability of the Board of Supervisors or its committees to deliberate or vote upon any matter presented to them. In any calendar year in which the costs to the City for providing translator services under this subsection exceeds \$20,000, the Board of Supervisors shall, as soon as possible thereafter, review the provisions of this subsection.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 482-96, App. 12/20/96; Proposition G, 11/2/99)

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## **SEC. 67.14. VIDEO AND AUDIO RECORDING, FILMING AND STILL PHOTOGRAPHY.**

(a) Any person attending an open and public meeting of a policy body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera, or to broadcast the proceedings, in the absence of a reasonable finding of the policy body that the recording or broadcast cannot continue without such noise, illumination or obstruction of view as to constitute a persistent disruption of the proceedings.

(b) Each board and commission enumerated in the Charter shall audio record each regular and special meeting. Each such audio recording, and any audio or video recording of a meeting of any other policy body made at the direction of the policy body shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. Inspection of any such recording shall be provided without charge on an appropriate play back device made available by the City.



(c) Every City policy body, agency or department shall audio or video every noticed regular meeting, special meeting, or hearing open to the public held in a City Hall hearing room that is equipped with audio or video recording facilities, except to the extent that such facilities may not be available for technical or other reasons. Each such audio or video recording shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. The City shall make such audio or video recording available in digital form at a centralized location on the City's web site (www.sfgov.org) within seventy-two hours of the date of the meeting or hearing and for a period of at least two years after the date of the meeting or hearing. Inspection of any such recording shall also be provided without charge on an appropriate play back device made available by the City. This subsection (c) shall not be construed to limit or in any way modify the duties created by any other provision of this article, including but not limited to the requirements for recording closed sessions as stated in Section 67.8-1 and for recording meetings of boards and commissions enumerated in the Charter as stated in subsection (b) above.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99; Ord. 80-08, File No. 071596)

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## **SEC. 67.15. PUBLIC TESTIMONY.**

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article. However, in the case of a meeting of the Board of Supervisors, the agenda need not provide an opportunity for members of the public to address the Board on any item that has already been considered by a committee, composed exclusively of members of the Board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the Board.

(b) Every agenda for special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon.

(c) A policy body may adopt reasonable regulations to ensure that the intent of subdivisions (a) and (b) are carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify.

(d) A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to Subdivision (c) of this Section.

(e) To facilitate public input, any agenda changes or continuances shall be announced by the presiding officer of a policy body at the beginning of a meeting, or as soon thereafter as the change or continuance becomes known to such presiding officer.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.16. MINUTES.**

The clerk or secretary of each board and commission enumerated in the Charter shall record the minutes for each regular and special meeting of the board or commission. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person's statement during the public comment period for each agenda item, and the time the meeting was adjourned. 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.

The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten working days after the meeting at which the minutes are adopted. Upon request, minutes required to be produced by this Section shall be made available in Braille or increased type size.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.17. PUBLIC COMMENT BY MEMBERS OF POLICY BODIES.**

Every member of a policy body retains the full constitutional rights of a citizen to comment publicly on the wisdom or propriety of government actions, including those of the policy body of which he or she is a member. Policy bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials for expressing their judgments or opinions, including those which deal with the perceived inconsistency of non-public discussions, communications or actions with the requirements of State or Federal law or of this ordinance. The release of specific factual information made confidential by State or Federal law including, but not limited to, the privilege for confidential attorney-client communications, may be the basis for a request for injunctive or declaratory relief, of a complaint to the Mayor seeking an accusation of misconduct, or both.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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# **ARTICLE III: PUBLIC INFORMATION AND PUBLIC RECORDS**

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- Sec. 67.20. Definitions.
- Sec. 67.21. Process for Gaining Access to Public Records; Administrative Appeals.
- Sec. 67.21-1. Policy Regarding Use and Purchase of Computer Systems.
- Sec. 67.22. Release of Oral Public Information.
- Sec. 67.23. Public Review File – Policy Body Communications.
- Sec. 67.24. Public Information that Must Be Disclosed.

- Sec. 67.25. Immediacy of Response.
- Sec. 67.26. Withholding Kept to a Minimum.
- Sec. 67.27. Justification of Withholding.
- Sec. 67.28. Fees for Duplication.
- Sec. 67.29. Index to Records.
- Sec. 67.29-1. Records Survive Transition of Officials.
- Sec. 67.29-2. Internet Access/World Wide Web Minimum Standards.
- Sec. 67.29-3.
- Sec. 67.29-4. Lobbyist On Behalf of the City.
- Sec. 67.29-5. Calendars of Certain Officials.
- Sec. 67.29-6. Sources of Outside Funding.
- Sec. 67.29-7. Correspondence and Records Shall Be Maintained.

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## **SEC. 67.20. DEFINITIONS.**

Whenever in this article the following words or phrases are used, they shall mean:

- (a) "Department" shall mean a department of the City and County of San Francisco.
- (b) "Public Information" shall mean the content of "public records" as defined in the California Public Records Act (Government Code Section 6252), whether provided in documentary form or in an oral communication. "Public Information" shall not include "computer software" developed by the City and County of San Francisco as defined in the California Public Records Act (Government Code Section 6254.9).
- (c) "Supervisor of Records" shall mean the City Attorney.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 375, App. 9/30/96; Proposition G, 11/2/99)

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## **SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.**

- (a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) 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 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.

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the *superior court* shall have jurisdiction to order compliance.

(g) In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance Task Force, the supervisor of public records shall prepare a tally and report of every petition brought

before it for access to records since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public. The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records.

(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.

(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 requirements provided in this ordinance.

(l) 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.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)

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## **SEC. 67.21-1. POLICY REGARDING USE AND PURCHASE OF COMPUTER SYSTEMS.**

(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 members of the public under this section. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall program and design these 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) Departments 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 computer 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.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)

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## **SEC. 67.22. RELEASE OF ORAL PUBLIC INFORMATION.**

Release of oral public information shall be accomplished as follows:

(a) Every department head shall designate a person or persons knowledgeable about the affairs of the department, to provide information, including oral information, to the public about the department's operations, plans, policies and positions. The department head may designate himself or herself for this assignment, but in any event shall arrange that an alternate be available for this function during the absence of the person assigned primary responsibility. If a department has multiple bureaus or divisions, the department may designate a person or persons for each bureau or division to provide this information.

(b) The role of the person or persons so designated shall be to provide information on as timely and responsive a basis as possible to those members of the public who are not requesting information from a specific person. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.

(c) No employee shall be required to respond to an inquiry or inquiries from an individual if it would take the employee more than fifteen minutes to obtain the information responsive to the inquiry or inquiries.

(d) Public employees shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion (1) is not represented as that of the department and does not misrepresent the department position; and (2) does not disrupt coworker relations, impair discipline or control by superiors, erode a close working relationship premised on personal loyalty and confidentiality, interfere with the employee's performance of his or her duties or obstruct the routine operation of the office in a manner that outweighs the employee's interests in expressing that opinion. In adopting this subdivision, the Board of Supervisors intends merely to restate and affirm court decisions recognizing the First Amendment rights enjoyed by public employees. Nothing in this section shall be construed to provide rights to City employees beyond those recognized by courts, now or in the future, under the First Amendment, or to create any new private cause of action or defense to disciplinary action.

(e) Notwithstanding any other provisions of this ordinance, public employees shall not be discouraged from or disciplined for disclosing any information that is public information or a public record to any journalist or any member of the public. Any public employee who is disciplined for disclosing public information or a public record shall have a cause of action against the City and the supervisor imposing the discipline.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.23. PUBLIC REVIEW FILE – POLICY BODY COMMUNICATIONS.**

(a) The clerk of the Board of Supervisors and the clerk of each board and commission enumerated in the charter shall maintain a file, accessible to any person during normal office hours, containing a copy of any letter, memorandum or other communication which the clerk has distributed to or received from a quorum of the policy body concerning a matter calendared by the body within the previous 30 days or likely to be calendared within the next 30 days, irrespective of subject matter, origin or recipient, except commercial solicitations, periodical publications or communications exempt from disclosure under the California Public Records Act (Government Code Section 6250 et seq.) and not deemed disclosable under Section 67.24 of this article.

(b) Communications, as described in subsection (a), sent or received in the last three business days shall be maintained in chronological order in the office of the department head or at a place nearby, clearly designated to the public. After documents have been on file for two full days, they may be removed, and, in the discretion of the board or commission, placed in a monthly chronological file.

(c) Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the file so long as the letter or memorandum of transmittal is included.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.**

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

### **(a) Drafts and Memoranda.**

(1) Except as provided in subparagraph (2), no preliminary draft or department memorandum, whether in printed or electronic form, shall be exempt from disclosure under Government Code Section 6254, Subdivision (a) or any other provision. If such a document is not normally kept on file and would otherwise be disposed of, its factual content is not exempt under Subdivision (a). Only the recommendation of the author may, in such circumstances, be withheld as exempt.

(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.

### **(b) Litigation Material.**

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco Governmental Ethics Code, or this Ordinance.

(2) Unless otherwise privileged under California law, when litigation is finally adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure, including the text and terms of any settlement.

(c) **Personnel Information.** None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden:

(1) The job pool characteristics and employment and education histories of all successful job applicants, including at a minimum the following information as to each successful job applicant:

(i) Sex, age and ethnic group;

(ii) Years of graduate and undergraduate study, degree(s) and major or discipline;

(iii) Years of employment in the private and/or public sector;

(iv) Whether currently employed in the same position for another public agency.

(v) Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.

(2) The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, social security number, age, and marital status of the employee shall be redacted.

(3) The job description of every employment classification.

(4) The exact gross salary and City-paid benefits available to every employee.

(5) Any memorandum of understanding between the City or department and a recognized employee organization.

(6) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is approved.

(7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.

(d) **Law Enforcement Information.**



The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of this ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of the District Attorney and Sheriff as interpreted under Government Code section 25303, or other applicable State law or judicial decision. Records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

- (1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);
- (2) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;
- (3) The identity of a confidential source;
- (4) Secret investigative techniques or procedures;
- (5) Information whose disclosure would endanger law enforcement personnel; or
- (6) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

This Subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or department responsible for regulatory protection of the public health, safety, or welfare.

**(e) Contracts, Bids and Proposals.**

(1) Contracts, contractors' bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to a Request for Proposal ("RFP") has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed.

(2) Notwithstanding the provisions of this Subdivision or any other provision of this ordinance, the Director of Public Health may withhold from disclosure proposed and final rates of payment for managed health care contracts if the Director determines that public disclosure would adversely affect the ability of the City to engage in effective negotiations for managed health care contracts. The authority to withhold this information applies only to contracts pursuant to which the City (through the Department of Public Health) either pays for health care services or receives

compensation for providing such services, including mental health and substance abuse services, to covered beneficiaries through a pre-arranged rate of payment. This provision also applies to rates for managed health care contracts for the University of California, San Francisco, if the contract involves beneficiaries who receive services provided jointly by the City and University. This provision shall not authorize the Director to withhold rate information from disclosure for more than three years.

(3) During the course of negotiations for:

(i) personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;

(ii) leases or permits having total anticipated revenue or expense to the City and County of five hundred thousand dollars (\$500,000) or more or having a term of ten years or more; or

(iii) any franchise agreements,

all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the City Attorney or City representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying. At the end of each fiscal year, each City department shall provide to the Board of Supervisors a list of all sole source contracts entered into during the past fiscal year. This list shall be made available for inspection and copying as provided for elsewhere in this Article.

(f) **Budgets and Other Financial Information.** Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.

(g) Neither the City nor any office, employee, or agent thereof may assert California Public Records Act Section 6255 or any similar provision as the basis for withholding any documents or information requested under this ordinance.

(h) Neither the City nor any office, employee, or agent thereof may assert an exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.

(i) Neither the City, nor any office, employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act that is not forbidden by this ordinance.

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## **SEC. 67.25. IMMEDIACY OF RESPONSE.**

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this Article.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.**

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. 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.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.27. JUSTIFICATION OF WITHHOLDING.**

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 or 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.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.28. FEES FOR DUPLICATION.**

(a) No fee shall be charged for making public records available for review.

(b) For documents routinely produced in multiple copies for distribution, e.g. meeting agendas and related materials, unless a special fee has been established pursuant to Subdivision (d) of this Section, a fee not to exceed one cent per page may be charged, plus any postage costs.

(c) For documents assembled and copied to the order of the requester, unless a special fee has been established pursuant to Subdivision (d) of this Section, a fee not to exceed 10 cents per page may be charged, plus any postage.

(d) A department may establish and charge a higher fee than the one cent presumptive fee in Subdivision (b) and the 10 cent presumptive fee in Subdivision (c) if it prepares and posts an itemized cost analysis establishing that its cost per page impression exceeds 10 cents or one cent, as the case may be. The cost per page impression shall include the following costs: one sheet of paper; one duplication cycle of the copying machine in terms of toner and other specifically identified operation or maintenance factors, excluding electrical power. Any such cost analysis shall identify the manufacturer, model, vendor and maintenance contractor, if any, of the copying machine or machines referred to.

(e) Video copies of video recorded meetings shall be provided to the public upon request for \$10.00 or less per meeting.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

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## **SEC. 67.29. INDEX TO RECORDS.**

The City and County shall prepare a public records index that identifies the types of information and documents maintained by City and County departments, agencies, boards, commissions, and elected officers. The index shall be for the use of City officials, staff and the general public, and

shall be organized to permit a general understanding of the types of information maintained, by which officials and departments, for which purposes and for what periods of retention, and under what manner of organization for accessing, e.g. by reference to a name, a date, a proceeding or project, or some other referencing system. The index need not be in such detail as to identify files or records concerning a specific person, transaction or other event, but shall clearly indicate where and how records of that type are kept. Any such master index shall be reviewed by appropriate staff for accuracy and presented for formal adoption to the administrative official or policy body responsible for the indexed records. The City Administrator shall be responsible for the preparation of this records index. The City Administrator shall report on the progress of the index to the Sunshine Ordinance Task Force on at least a semi-annual basis until the index is completed. Each department, agency, commission and public official shall cooperate with the City Administrator to identify the types of records it maintains, including those documents created by the entity and those documents received in the ordinary course of business and the types of requests that are regularly received. Each department, agency, commission and public official is encouraged to solicit and encourage public participation to develop a meaningful records index. The index shall clearly and meaningfully describe, with as much specificity as practicable, the individual types of records that are prepared or maintained by each department, agency, commission or public official of the City and County. The index shall be sufficient to aid the public in making an inquiry or a request to inspect. Any changes in the department, agency, commission or public official's practices or procedures affecting the accuracy of the information provided to the City Administrator shall be recorded by the City Administrator on a periodic basis so as to maintain the integrity and accuracy of the index. The index shall be continuously maintained on the City's World Wide Website and made available at public libraries within the City and County of San Francisco.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

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## **SEC. 67.29-1. RECORDS SURVIVE TRANSITION OF OFFICIALS.**

All documents prepared, received, or maintained by the Office of the Mayor, by any elected city and county official, and by the head of any City or County Department are the property of the City and County of San Francisco. The originals of these documents shall be maintained consistent with the records retention policies of the City and County of San Francisco.

(Added by Proposition G, 11/2/99)

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## **SEC. 67.29-2. INTERNET ACCESS/WORLD WIDE WEB MINIMUM STANDARDS.**

Each department of the City and County of San Francisco shall maintain on a World Wide Web site, or on a comparable, readily accessible location on the Internet, information that it is required to make publicly available. Each department is encouraged to make publicly available through its World Wide Web site, as much information and as many documents as possible concerning its activities. At a minimum, within six months after enactment of this provision, each department shall post on its World Wide Web site all meeting notices required under this ordinance, agendas and the minutes of all previous meetings of its policy bodies for the last three years. Notices and agendas shall be posted no later than the time that the department otherwise distributes this information to the public, allowing reasonable time for posting. Minutes of meetings shall be posted as soon as possible, but in any event within 48 hours after they have been approved. Each department shall make reasonable efforts to ensure that its World Wide Web site is regularly reviewed for timeliness



and updated on at least a weekly basis. The City and County shall also make available on its World Wide Web site, or on a comparable, readily accessible location on the Internet, a current copy of the City Charter and all City Codes.

(Added by Proposition G, 11/2/99)

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### **SEC. 67.29-3.**

Any future agreements between the city and an advertising space provider shall be public records and shall include as a basis for the termination of the contract any action by, or permitted by, the space provider to remove or deface or otherwise interfere with an advertisement without first notifying the advertiser and the city and obtaining the advertiser's consent. In the event advertisements are defaced or vandalized, the space provider shall provide written notice to the city and the advertiser and shall allow the advertiser the option of replacing the defaced or vandalized material. Any request by any city official or by any space provider to remove or alter any advertising must be in writing and shall be a public record.

(Added by Proposition G, 11/2/99)

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### **SEC. 67.29-4. LOBBYIST ON BEHALF OF THE CITY.**

(a) Any lobbyist who contracts for economic consideration with the City and County of San Francisco to represent the City and County in matters before any local, regional, State, or federal administrative or legislative body shall file a public records report of their activities on a quarterly basis with the San Francisco Ethics Commission. This report shall be maintained by the Ethics Commission and not be exempt from disclosure. Each quarterly report shall identify all financial expenditures by the lobbyist, the individual or entity to whom each expenditure was made, the date the expenditure was made, and specifically identify the local, State, regional or national legislative or administrative action the lobbyist supported or opposed in making the expenditure. The failure to file a quarterly report with the required disclosures shall be a violation of this Ordinance.

(b) No person shall be deemed a lobbyist under section (a), unless that person receives or becomes entitled to receive at least \$300 total compensation in any month for influencing legislative or administrative action on behalf of the City and County of San Francisco or has at least 25 separate contacts with local, State, regional or national officials for the purpose of influencing legislative or administrative action within any two consecutive months. No business or organization shall be deemed as a lobbyist under Section (a) unless it compensates its employees or members for their lobbying activities on behalf of the City and County of San Francisco, and the compensated employees or members have at least 25 separate contacts with local, State, regional or national officials for the purpose of influencing legislative or administrative action within any two consecutive months. "Total compensation" shall be calculated by combining all compensation received from the City and County of San Francisco during the month for lobbying activities on matters at the local, State, regional or national level. "Total number of contacts" shall be calculated by combining all contacts made during the two-month period on behalf of the City and County of San Francisco for all lobbying activities on matters at the local, state, regional or national level.

(c) Funds of the City and County of San Francisco, including organizational dues, shall not be used to support any lobbying efforts to restrict public access to records, information, or meetings, except where such effort is solely for the purpose of protecting the identity and privacy rights of private citizens.

(Added by Proposition G, 11/2/99)

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## **SEC. 67.29-5. CALENDARS OF CERTAIN OFFICIALS.**

The Mayor, The City Attorney, and every Department Head shall keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended by that official, with the exclusion of purely personal or social events at which no City business is discussed and that do not take place at City Offices or at the offices or residences of people who do substantial business with or are otherwise substantially financially affected by actions of the City. For meetings not otherwise publicly recorded, the calendar shall include a general statement of issues discussed. Such calendars shall be public records and shall be available to any requester three business days subsequent to the calendar entry date.

(Added by Proposition G, 11/2/99)

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## **SEC. 67.29-6. SOURCES OF OUTSIDE FUNDING.**

No official or employee or agent of the City shall accept, allow to be collected, or direct or influence the spending of, any money, or any goods or services worth more than one hundred dollars in aggregate, for the purpose of carrying out or assisting any City function unless the amount and source of all such funds is disclosed as a public record and made available on the website for the department to which the funds are directed. When such funds are provided or managed by an entity, and not an individual, that entity must agree in writing to abide by this ordinance. The disclosure shall include the names of all individuals or organizations contributing such money and a statement as to any financial interest the contributor has involving the City.

(Added by Proposition G, 11/2/99)

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## **SEC. 67.29-7. CORRESPONDENCE AND RECORDS SHALL BE MAINTAINED.**

(a) The Mayor and all Department Heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance.

(b) The Department of Elections shall keep and preserve all records and invoices relating to the design and printing of ballots and other election materials and shall keep and preserve records documenting who had custody of ballots from the time ballots are cast until ballots are received and certified by the Department of Elections.

(c) In any contract, agreement or permit between the City and any outside entity that authorizes that entity to demand any funds or fees from citizens, the City shall ensure that accurate records of each transaction are maintained in a professional and businesslike manner and are available to the public as public records under the provisions of this ordinance. Failure of an entity to comply with these provisions shall be grounds for terminating the contract or for imposing a financial penalty equal to one-half of the fees derived under the agreement or permit during the period of time when the failure was in effect. Failure of any Department Head under this provision shall be a violation of this ordinance. This paragraph shall apply to any agreement allowing an entity to tow or impound vehicles in the City and shall apply to any agreement allowing an entity to collect any fee from any persons in any pretrial diversion program.

(Added by Proposition G, 11/2/99)

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## **ARTICLE IV: POLICY IMPLEMENTATION**

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- Sec. 67.30. The Sunshine Ordinance Task Force.
- Sec. 67.31. Responsibility for Administration.
- Sec. 67.32. Provision of Services to Other Agencies; Sunshine Required.
- Sec. 67.33. Department Head Declaration.
- Sec. 67.34. Willful Failure Shall be Official Misconduct.
- Sec. 67.35. Enforcement Provisions.
- Sec. 67.36. Sunshine Ordinance Supersedes Other Local Laws.
- Sec. 67.37. Severability.

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### **SEC. 67.30. THE SUNSHINE ORDINANCE TASK FORCE.**

(a) There is hereby established a task force to be known as the Sunshine Ordinance Task Force consisting of eleven voting members appointed by the Board of Supervisors. All members must have experience and/or demonstrated interest in the issues of citizen access and participation in local government. Two members shall be appointed from individuals whose names have been submitted by the local chapter of the Society of Professional Journalists, one of whom shall be an attorney and one of whom shall be a local journalist. One member shall be appointed from the press or electronic media. One member shall be appointed from individuals whose names have been submitted by the local chapter of the League of Women Voters. Four members shall be members of the public who have demonstrated interest in or have experience in the issues of citizen access and participation in local government. Two members shall be members of the public experienced in consumer advocacy. One member shall be a journalist from a racial/ethnic-minority-owned news organization and shall be appointed from individuals whose names have been submitted by New California Media. At all times the task force shall include at least one member who shall be a member of the public who is physically handicapped and who has demonstrated interest in citizen access and participation in local government. The Mayor or his or her designee, and the Clerk of the Board of Supervisors or his or her designee, shall serve as non-voting members of the task force. The City Attorney shall serve as legal advisor to the task force. The Sunshine Ordinance Task Force shall, at its request, have assigned to in an attorney from within the City Attorney's Office or other appropriate City Office, who is experienced in public-access law matters. This attorney shall serve solely as a legal advisor and advocate to the Task Force and an ethical wall will be maintained between the work of this attorney on behalf of the Task Force and any person or Office that the Task Force determines may have a conflict of interest with regard to the matters being handled by the attorney.

(b) The term of each appointive member shall be two years unless earlier removed by the Board of Supervisors. In the event of such removal or in the event a vacancy otherwise occurs during the term of office of any appointive member, a successor shall be appointed for the unexpired term of the office vacated in a manner similar to that described herein for the initial members. The task force shall elect a chair from among its appointive members. The term of office as chair shall be one year. Members of the task force shall serve without compensation.

(c) The task force shall advise the Board of Supervisors and provide information to other City



departments on appropriate ways in which to implement this chapter. The task force shall develop appropriate goals to ensure practical and timely implementation of this chapter. The task force shall propose to the Board of Supervisors amendments to this chapter. The task force shall report to the Board of Supervisors at least once annually on any practical or policy problems encountered in the administration of this chapter. The Task Force shall receive and review the annual report of the Supervisor of Public Records and may request additional reports or information as it deems necessary. The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts. The Task Force shall, from time to time as it sees fit, issue public reports evaluating compliance with this ordinance and related California laws by the City or any Department, Office, or Official thereof.

(d) In addition to the powers specified above, the Task Force shall possess such powers as the Board of Supervisors may confer upon it by ordinance or as the People of San Francisco shall confer upon it by initiative.

(e) The Task Force Commission shall approve by-laws specifying a general schedule for meetings, requirements for attendance by Task Force members, and procedures and criteria for removing members for non-attendance.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 118-94, App. 3/18/94; Ord. 432-94, App. 12/30/94; Ord. 287-96, App. 7/12/96; Ord. 198-98, App. 6/19/98; 387-98, App. 12/24/98; Proposition G, 11/2/99)

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## **SEC. 67.31. RESPONSIBILITY FOR ADMINISTRATION.**

The Mayor shall administer and coordinate the implementation of the provisions of this chapter for departments under his or her control. The Mayor shall administer and coordinate the implementation of the provisions of this Chapter for departments under the control of board and commissions appointed by the Mayor. Elected officers shall administer and coordinate the implementation of the provisions of this chapter for departments under their respective control. 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.

(Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

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## **SEC. 67.32. PROVISION OF SERVICES TO OTHER AGENCIES; SUNSHINE REQUIRED.**

It is the policy of the City and County of San Francisco to ensure opportunities for informed civic participation embodied in this Ordinance to all local, state, regional and federal agencies and institutions with which it maintains continuing legal and political relationships. Officers, agents and other representatives of the City shall continually, consistently and assertively work to seek commitments to enact open meetings, public information and citizen comment policies by these agencies and institutions, including but not limited to the Presidio Trust, the San Francisco Unified School District, the San Francisco Community College District, the San Francisco Transportation Authority, the San Francisco Housing Authority, the Treasure Island Development Authority, the San Francisco Redevelopment Authority and the University of California. To the extent not expressly prohibited by law, copies of all written communications with the above identified entities and any City employee, officer, agents, or and representative, shall be accessible as public records.

To the extent not expressly prohibited by law, any meeting of the governing body of any such agency and institution at which City officers, agents or representatives are present in their official capacities shall be open to the public, and this provision cannot be waived by any City officer, agent or representative. The City shall give no subsidy in money, tax abatements, land, or services to any private entity unless that private entity agrees in writing to provide the City with financial projections (including profit and loss figures), and annual audited financial statements for the project thereafter, for the project upon which the subsidy is based and all such projections and financial statements shall be public records that must be disclosed.

(Added by Proposition G, 11/2/99)

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### **SEC. 67.33. DEPARTMENT HEAD DECLARATION.**

All City department heads and all City management employees and all employees or officials who are required to sign an affidavit of financial interest with the Ethics Commission shall sign an annual affidavit or declaration stating under penalty of perjury that they have read the Sunshine Ordinance and have attended or will attend when next offered, a training session on the Sunshine Ordinance, to be held at least once annually. The affidavit or declarations shall be maintained by the Ethics Commission and shall be available as a public record. Annual training shall be provided by the San Francisco City Attorney's Office with the assistance of the Sunshine Ordinance Task Force.

(Added by Proposition G, 11/2/99)

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### **SEC. 67.34. WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT.**

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission.

(Added by Proposition G, 11/2/99)

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### **SEC. 67.35. ENFORCEMENT PROVISIONS.**

(a) Any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this Ordinance or to enforce his or her right to attend any meeting required under this Ordinance to be open, or to compel such meeting to be open.

(b) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought to enforce this Ordinance.

(c) If a court finds that an action filed pursuant to this section is frivolous, the City and County may assert its rights to be paid its reasonable attorneys' fees and costs.

(d) Any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a City or State official 40 days after a complaint is filed.

(Added by Proposition G, 11/2/99)

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## **SEC. 67.36. SUNSHINE ORDINANCE SUPERSEDES OTHER LOCAL LAWS.**

The provisions of this Sunshine Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply.

(Added by Proposition G, 11/2/99)

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## **SEC. 67.37. SEVERABILITY.**

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

## Argumedo, Catherine (ETH)

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**From:** Argumedo, Catherine (ETH)  
**Sent:** Monday, January 12, 2015 4:28 PM  
**To:** 'Allen GROSSMAN'; St.Croix, John  
**Cc:** Mainardi, Jesse (ETH)  
**Subject:** Reminder: Ethics Commission SHOW CAUSE HEARING on January 26, 2015 at 5:30 PM  
re: Ethics Complaint No. 01-140107  
**Attachments:** Notice.Show.Cause.Hearing.0114.pdf; Show.Cause.Docs.0114.pdf

Ethics Complaint No. 01-140107 is scheduled for a show cause hearing during the Ethics Commission's next regular meeting on Monday, January 26, 2015 at 5:30 PM in Room 400 at City Hall.

Each party may submit documents to the Commission to support his position, pursuant to Chapter II, Section II.C.2 of the Ethics Commission Regulations for Handling Violations of the Sunshine Ordinance. Each party's written submission shall not exceed five pages, excluding supporting documents. Any documents so provided shall be provided to the opposing party and shall be delivered to the Commission no later than five business days prior to the scheduled hearing, or **Friday, January 16, 2015**. A copy of the Regulations may be found at the following address:  
<http://www.sfethics.org/files/EC.Sunshine.Regulations.effective.Nov.2013.pdf>

Please note that Monday, January 19, 2015 is a holiday and the Ethics Commission will be closed.

Regards,

Catherine Argumedo  
Ethics Commission  
City and County of San Francisco  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102-6053  
415-252-3100 (t)  
415-252-3112 (f)  
[www.sfethics.org](http://www.sfethics.org)

**CONFIDENTIALITY NOTICE:** This communication with its contents may contain confidential and/or legally privileged information. This communication contains information solely for the use of the intended recipient(s). Unauthorized interception, review, use, or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender immediately and destroy all copies of the communication.

## **Argumedo, Catherine (ETH)**

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**From:** Argumedo, Catherine (ETH)  
**Sent:** Friday, December 12, 2014 11:16 AM  
**To:** 'Allen GROSSMAN'; St.Croix, John  
**Cc:** Mainardi, Jesse (ETH)  
**Subject:** Notice of Ethics Commission SHOW CAUSE HEARING on January 26, 2015 at 5:30 PM  
re: Ethics Complaint No. 01-140107  
**Attachments:** Notice.Show.Cause.Hearing.0114.pdf; Show.Cause.Docs.0114.pdf

On November 21, 2013, the Ethics Commission received a referral from the Sunshine Ordinance Task Force regarding a complaint by Allen Grossman against John St. Croix, Executive Director of the Ethics Commission. The referral was made pursuant to section 67.30(c) of the Sunshine Ordinance. This matter, Ethics Complaint No. 01-140107 (Sunshine complaint number 12056), has been scheduled for a show cause hearing during the Ethics Commission's next regular meeting on **Monday, January 26, 2015 at 5:30 PM in Room 400 at City Hall.**

The hearing notice and documents relating to this matter are attached to this e-mail. A hard copy of all documents will be provided upon request.

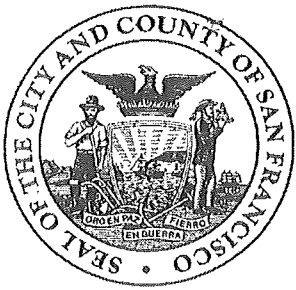
Each party may submit any documents to the Commission to support his position, pursuant to Chapter II, Section II.C.2 of the Ethics Commission Regulations for Handling Violations of the Sunshine Ordinance. Any documents so provided shall be provided to the opposing party and shall be delivered to the Commission no later than five business days prior to the scheduled hearing, or Monday, January 16, 2015. A copy of the Regulations may be found at the following address: <http://www.sfethics.org/files/EC.Sunshine.Regulations.effective.Nov.2013.pdf>

Please let me know if you are unable to open the attachments.

Regards,

Catherine Argumedo  
Ethics Commission  
City and County of San Francisco  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102-6053  
415-252-3100 (t)  
415-252-3112 (f)  
[www.sfethics.org](http://www.sfethics.org)

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# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

PAUL A. RENNE  
VICE-CHAIRPERSON

BRETT ANDREWS  
COMMISSIONER

BEVERLY HAYON  
COMMISSIONER

PETER KEANE  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: December 12, 2014

To: Allen Grossman, Complainant  
John St. Croix, Executive Director, Ethics Commission, Respondent

From: *JM*  
Jesse Mainardi, Deputy Executive Director

Re: **NOTICE of SHOW CAUSE HEARING re: Ethics Complaint No. 01-140107 on Monday, January 26, 2015 at 5:30 PM**

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This Notice of Show Cause Hearing concerns a referral letter and an Order of Determination ("Order") delivered by the Sunshine Ordinance Task Force ("Task Force") to the Ethics Commission on November 21, 2013 regarding a complaint Allen Grossman filed against John St. Croix, Executive Director of the Ethics Commission. The referral was made pursuant to section 67.30(c) of the Sunshine Ordinance and named Mr. St. Croix as the Respondent. This matter was previously continued pending the resolution of litigation, as set forth below.

### Background

According to the Order, Allen Grossman filed a complaint with the Task Force on November 19, 2012 against the Respondent and alleged that the Respondent failed to fully respond to his public records request dated October 3, 2012. The Complainant alleged violations of the public records laws, specifically including Sunshine Ordinance sections 67.21(b), 67.27(a) & (b), and 67.24(b)(1)(i) & (iii). The Task Force heard the matter on June 5, 2013 and found Sunshine Ordinance sections 67.21(b) and 67.24(b)(1) to be applicable to this case. The Task Force found that the requested records "are disclosable" and that Respondent violated section 67.21(b) for failure to provide the records within ten days following receipt of a request and section 67.24(b)(1) for withholding records subject to disclosure.

The Order was issued on June 24, 2013 and Respondent was ordered to release the records and appear before the Compliance and Amendments Committee on August 20, 2013. The Compliance and Amendments Committee heard the matter on August 20, 2013 and referred the matter back to the Task Force.

On September 4, 2013, the Task Force heard the matter again. According to the referral letter, the Task Force moved to find Respondent in violation of the Sunshine Ordinance and voted to refer the complaint to the Board of Supervisors and the Ethics Commission for violating sections 67.21(b), 67.27(a)(b) and 67.24(b)(1)(i)&(iii). On

January 27, 2014, the Board of Supervisors notified the Ethics Commission that it had closed this matter after taking no action.

On January 8, 2014, Respondent requested a continuance as the referral alleged violations of the Sunshine Ordinance that were also before the Court of Appeal of the State of California, First Appellate District (appeal from the Superior Court of California, Case # CPF-13-513221), in litigation originally initiated by the Complainant. Chairperson Hayon granted the request for a continuance on January 10, 2014. The Court of Appeal issued its decision in the matter on July 28, 2014 in favor of the Respondent, and the Supreme Court of California denied Complainant's Petition for Review on November 12, 2014. Due to notice requirements and the cancellation of the Ethics Commission's regular meeting in December 2014, the January 2015 regular meeting of the Ethics Commission is the first opportunity following the Supreme Court's denial to schedule this hearing.

### Hearing Procedures & Scheduling

This matter will be heard under **Chapter Two** of the Ethics Commission Regulations for Handling Violations of the Sunshine Ordinance ("Regulations"). This matter is scheduled to be heard at a Show Cause Hearing during the next regular Ethics Commission meeting at **5:30 PM on Monday, January 26, 2015**, in Room 400 in City Hall.

According to Chapter Two of the Regulations, the Respondent bears the burden to show that he or she did not violate the Sunshine Ordinance. (*See* Regulations, Chapter Two, § II.B.) The Commission shall deliberate on this matter in public and public comment will be allowed at the hearing. (*See* Regulations, Chapter Two, § II.D.) The votes of at least three Commissioners are required to make a finding that a Respondent has met his or her burden and has not committed a violation of the Sunshine Ordinance. The finding shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings. (*See* Regulations, Chapter Two, § II.D.)

Neither the Respondent nor the Complainant is required to attend the hearing. However, if either party fails to appear, and the Commission has not granted the party a continuance or rescheduled the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing, or no later than Friday, January 9, 2015.

The Respondent and the Complainant may speak on his or her own behalf at the hearing, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing.

Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Each party's written submission shall not exceed five pages, excluding

supporting documents. Any such submission and supporting documents shall also be provided to the opposing party and shall be delivered to the Commission no later than five business days prior to the scheduled hearing, or no later than Monday, January 16, 2015.

Copies of all of the documents received from the Task Force regarding this matter have been attached to this memorandum; a copy of the Regulations is also attached.





# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BEVERLY HAYON  
CHAIRPERSON

PAUL A. RENNE  
VICE-CHAIRPERSON

BRETT ANDREWS  
COMMISSIONER

BENEDICT Y. HUR  
COMMISSIONER

PETER KEANE  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

## Via Hand Delivery

January 10, 2014

John St. Croix, Executive Director  
Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

## **Re: Request for Continuance (Ethics Complaint No. 01-140107)**

Director St. Croix:

As Chairperson of the Ethics Commission, I hereby grant your request for a continuance of this matter. This matter will be continued until the conclusion of court proceedings regarding the appeal of Superior Court of San Francisco Case No. CPF-13-513221, which is currently before the Court of Appeal of the State of California, First Appellate District.

Sincerely,

A handwritten signature in cursive script, appearing to read "Beverly Hayon".

Beverly Hayon  
Chairperson

Cc (e-mail): Allen Grossman, Complainant

BY \_\_\_\_\_  
FILED  
2014 JAN 10 AM 10:05  
SAN FRANCISCO  
ETHICS COMMISSION

## Chatfield, Garrett (ETH)

---

**From:** St.Croix, John  
**Sent:** Wednesday, January 08, 2014 4:48 PM  
**To:** Chatfield, Garrett  
**Cc:** grossman356@mac.com  
**Subject:** FW: Continuance Request

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FYI

Dear Chairperson Hayon -

On November 21, 2013, the Ethics Commission received a Sunshine Ordinance Task Force referral (Ethics Complaint No. 01-140107) naming me, John St. Croix, as Respondent. The referral alleged violations of the Sunshine Ordinance that are currently being litigated in the Court of Appeal of the State of California, First Appellate District, appeal from the Superior Court of California, Case # CPF-1 3-513221.

Under the Regulations for Handling Violations of the Sunshine Ordinance, Task Force referrals must be calendared for a hearing before the Commission at the next Regular Commission meeting. (*See Regulations, Ch. Two, § I.B.*) As there was no Commission meeting in December 2013, the Regular Commission meeting of January 27, 2014, is the first opportunity to schedule the hearing.

As the allegations in the Sunshine Task Force referral are identical to those currently being litigated, I respectfully request that the Commission continue the hearing on the matter until after the litigation is resolved by the Court. (*See Regulations, Ch. Four, § I.E.*) The outcome of the litigation will not interfere with your ability to hear the matter at a future hearing. (*See SF Admin. Code, § 67.21(f).*) However, the resolution of the litigation may better inform the Commission in making its determination regarding the matter.

A copy of this request will be forwarded to the complainant, Alan Grossman

John St. Croix  
Executive Director  
San Francisco Ethics Commission

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

November 21, 2013

FILED

NOV 21 PM 4:32

SAN FRANCISCO  
ETHICS COMMISSION

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

**Re: Compliance and Amendments Committee recommendation for referral to the Ethics Commission in the case of Allen Grossman against John St. Croix, for failure to provide disclosable records. (Sunshine Ordinance Complaint No. 12056, Allen Grossman vs. John St. Croix, Ethics Commission)**

Dear Ethics Commission,

On June 5, 2013, the Task Force heard Complaint No. 12056, by Allen Grossman ("Complainant") against John St. Croix, Executive Director of the Ethics Commission ("Respondent"). The Complainant alleged that Respondent violated public records laws in his role as Executive Director by not fully responding to his public records request dated October 3, 2012.

Complainant Allen Grossman appeared before the Task Force and presented his claim. Respondent, John St. Croix, Executive Director, Ethics Commission, presented the Ethics Commission's defense. The issue in the case was whether the Respondent violated Sections 67.21, 67.24, and 67.27 of the Ordinance and/or Sections 6253 and 6254 of the California Public Records Act. Mr. Grossman alleges John St. Croix, Executive Director, Ethics Commission, failed to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under provisions of the Sunshine Ordinance.

Based on the testimony and evidence presented, the Task Force found the testimony of Mr. Grossman to be persuasive and finds Sections 67.21(b) and 67.24(b)(1) of the Ordinance to be applicable in this case. The Task Force found that the records requested from the Ethics Commission are disclosable public records and found that Respondent has violated Section 67.21(b) of the Sunshine Ordinance for failure to provide the records within ten days following receipt of a request and Section 67.24(b)(1) of the Sunshine Ordinance for withholding records subject to disclosure. An Order of Determination was issued on June 24, 2013 asking John St. Croix, Executive Director, Ethics Commission, to release the records requested within 5 business days of the issuance of the Order and to appear before the Compliance and Amendments Committee on August 20, 2013.

On August 20, 2013 the Compliance and Amendments Committee heard Allen Grossman (Complainant) provide an update on the June 24th order of determination from the June 4, 2013 full SOTF meeting. The Respondent (John St. Croix) provided an update that no additional records had been


<http://www.sfgov.org/sunshine/>

provided and responded to questions. The committee moved to refer the matter back to the Task Force with a recommendation that it be forwarded to the Ethics Commission.

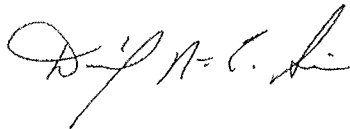
At the September 4, 2013 SOTF meeting the Task Force found John St. Croix in violation of the Sunshine Ordinance and voted to refer the complaint to the Board of Supervisors and the Ethics Commission for violating Sections 67.21(b), 67.27 (a)(b) and 67.24 (b)(1) (i)&(iii).

This request and referral is made under Section 67.30 (c) whereby the Task Force shall make referrals to a municipal office with enforcement power under the Sunshine Ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this Ordinance or the Acts.

Thank you for your timely attention to this matter. A description of the Task Force hearing, violations found, and decision are described in the attached Order of Determination. Please contact the Sunshine Ordinance Task Force Administrator at [sotf@sfgov.org](mailto:sotf@sfgov.org) or (415) 554-7724 with any questions or concerns.



Kitt Grant, Chair  
Sunshine Ordinance Task Force



David Sims, Member Attorney  
Sunshine Ordinance Task Force

Encl.

cc: Allen Grossman, Complainant  
John St. Croix, Respondent  
Celia Lee, Deputy City Attorney  
Jerry Threet, Deputy City Attorney



**ORDER OF DETERMINATION**

June 24, 2013

**DATE THE DECISION ISSUED**

June 5, 2013

*ALLEN GROSSMAN VS. JOHN ST. CROIX, ETHICS COMMISSION (CASE NO. 12056)*

**FACTS OF THE CASE**

Allen Grossman ("Complainant") alleges that John St. Croix, in his role as Executive Director of the Ethics Commission ("CAO"), violated public records laws by failing to fully respond to his public records request dated October 3, 2012.

**COMPLAINT FILED**

On November 19, 2012, Complainant filed this complaint against St. Croix, alleging violations of the public records laws, including specifically Sunshine Ordinance ("Ordinance") Sections 67.21(b), 67.27(a) & (b), and 67.24(b)(1)(i) & (iii).

**HEARING ON THE COMPLAINT**

On June 5, 2013, Complainant Allen Grossman appeared before the Task Force and presented his claim. Respondent, John St. Croix, Executive Director, Ethics Commission, presented the Ethics Commission's defense.

The issue in the case is whether the Respondent violated Sections 67.21, 67.24, and 67.27 of the Ordinance and/or Sections 6253 and 6254 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 Mr. Grossman to be persuasive and finds Sections 67.21(b) and 67.24(b)(1) of the Ordinance to be applicable in this case. The Task Force does not find the testimony provided by John St. Croix, Executive Director, Ethics Commission, persuasive to this case.

**DECISION AND ORDER OF DETERMINATION**

The Task Force finds that the records requested from the Ethics Commission are disclosable public records and finds that Respondent has violated Section 67.21(b) of the Sunshine Ordinance for failure to provide the records within ten days following receipt of a request and Section 67.24(b)(1) of the Sunshine Ordinance for withholding records subject to disclosure. John St. Croix, Executive Director, Ethics Commission, shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on August 20, 2013.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on June 5, 2013, by the following vote:

(Washburn/Knee) (Violation 67.21(b))

Ayes: Knee, Washburn, Sims, Hyland, Oka, Fischer

Noes: Pilpel, David

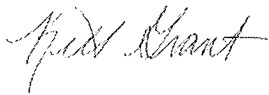
Absent: Grant

(Fischer/David) (Violation 67.24(b)(1))

Ayes: Knee, Washburn, Sims, Hyland, Oka, Fischer

Noes: Pilpel, David

Absent: Grant



Kitt Grant, Chair  
Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney  
Allen Grossman, Complaint  
John St. Croix, Executive Director Respondent



# SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO AGENDA

Hearing Room 408  
City Hall, 1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

June 5, 2013 – 4:00 PM

## Regular Meeting

### 1. CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES

Seat 1	<i>(Vacant)</i>	Seat 8	Todd David
Seat 2	Richard Knee <i>(Hold Over)</i>	Seat 9	Chris Hyland
Seat 3	Kitt Grant – <b>Chair</b>	Seat 10	Louise Fischer – <b>Vice Chair</b>
Seat 4	<i>(Vacant)</i>	Seat 11	Bruce Oka
Seat 5	Allyson Washburn <i>(Hold Over)</i>		
Seat 6	David Pilpel	Ex-officio	Angela Calvillo
Seat 7	David Sims	Ex-officio	<i>(Vacant)</i>

2. **File No. 12055:** Complaint filed by Wood Robbins, LLP, representing Pacific Polk Properties, LLC against Dennis Herrera, City Attorney for allegedly not producing documents pertaining to the project at 1601 Larkin Street. *(attachment)*
  - (a) Determination of jurisdiction on complaint filed by Wood Robbins, LLP, representing Pacific Polk Properties, LLC against Dennis Herrera, City Attorney for allegedly not producing documents pertaining to the project at 1601 Larkin Street. *(approximately 5 minutes) (Discussion and Action)*
  - (b) Hearing on complaint filed by Wood Robbins, LLP, representing Pacific Polk Properties, LLC against Dennis Herrera, City Attorney for allegedly not producing documents pertaining to the project at 1601 Larkin Street. *(approximately 45 minutes) (Discussion and Action)*
3. **File No. 12056:** Complaint filed by Allen Grossman against John St. Croix, Executive Director, Ethics Commission for allegedly failing to justify withholding unidentified public records as exempt under provisions of the Sunshine Ordinance. *(attachment)*
  - (a) Determination of jurisdiction on complaint filed by Allen Grossman against John St. Croix, Executive Director, Ethics Commission for alleged failure to justify withholding unidentified public records as exempt under provisions of the Sunshine Ordinance. *(approximately 5 minutes) (Discussion and Action)*

- (b) Hearing on complaint filed by Allen Grossman against John St. Croix, Executive Director, Ethics Commission for alleged failure to justify withholding unidentified public records as exempt under provisions of the Sunshine Ordinance. *(approximately 45 minutes) (Discussion and Action)*
4. **Public Comment:** Members of the public may address the Sunshine Ordinance Task Force (SOTF) on matters that are within SOTF's jurisdiction, but not on today's agenda. (No Action) *Public comment shall be taken at 5:00 pm or as soon thereafter as possible.*
5. **File No. 12059:** Complaint filed by Supreet Pabla, SEIU Local 1022 against Human Services Agency for allegedly failing to provide records requested relevant to the representation of the bargaining unit's employees. *(attachment)*
- (a) Determination of jurisdiction on complaint filed by Supreet Pabla, SEIU Local 1022 against Human Services Agency for allegedly failing to provide records requested relevant to the representation of the bargaining unit's employees. *(approximately 5 minutes) (Discussion and Action)*
- (b) Hearing on complaint filed by Supreet Pabla, SEIU Local 1022 against Human Services Agency for allegedly failing to provide records requested relevant to the representation of the bargaining unit's employees. *(approximately 45 minutes) (Discussion and Action)*
6. **File No. 13005:** Complaint filed by Paula Datesh against Arts Commission for allegedly failing to respond to an Immediate Disclosure Request for records pertaining to the operations of the Arts Commission. *(attachment)*
- (a) Determination of jurisdiction on complaint filed by Paula Datesh against Arts Commission for allegedly failing to respond to an Immediate Disclosure Request for records pertaining to the operations of the Arts Commission. *(approximately 5 minutes) (Discussion and Action)*
- (b) Hearing on complaint filed by Paula Datesh against Arts Commission for allegedly failing to respond to an Immediate Disclosure Request for records pertaining to the operations of the Arts Commission. *(approximately 45 minutes) (Discussion and Action)*
7. **File No. 13011:** Complaint filed by Paula Datesh against the Arts Commission for allegedly not providing documents relating to Evelyn Russell, former Arts Commission Secretary. *(attachment)*
- (a) Determination of jurisdiction on complaint filed by Paula Datesh against the Arts Commission for allegedly not providing documents relating to Evelyn Russell, former Arts Commission Secretary. *(approximately 5 minutes) (Discussion and Action)*



- (b) Hearing on complaint filed by Paula Datesh against the Arts Commission for allegedly not providing documents relating to Evelyn Russell, former Arts Commission Secretary. *(approximately 45 minutes) (Discussion and Action)*
8. Motion (a) to communicate to the appropriate state government officials the Task Force's opposition to proposals in the State's draft budget for Fiscal Year 2013-2014 to (1) impose fees for access to court records and (2) halt State reimbursements to local governments for expenses incurred in complying with State public-records laws; and (b) to inform local news media of said communications. *(approximately 15 minutes) (Discussion and Action)*
9. **Approval of Minutes from the January 16, 2013 Special Meeting.** *(approximately 5 minutes) (Action) (attachment)*
10. **Approval of Minutes from the February 6, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
11. **Approval of Minutes from the March 6, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
12. **Approval of Minutes from the April 3, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
13. **Approval of Minutes from the May 1, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
14. **Report: Compliance and Amendments Committee meeting of April 16, 2013.** *(approximately 5 minutes) (Discussion)*
15. **Report: Education, Outreach and Training Committee meetings of April 29, 2013 and May 13, 2013.** *(approximately 5 minutes) (Discussion)*
16. **Administrator's Report.** *(approximately 5 minutes) (Discussion)*
17. **Announcements, Comments, Questions, and Future Agenda Items.** *(approximately 10 minutes) (Discussion and Action)*
18. **ADJOURNMENT**

### Agenda Item Information

Each item on the agenda may include: 1) Department or Agency cover letter and/or report; 2) Public correspondence; 3) Other explanatory documents. For more information concerning agendas, minutes, and meeting information, such as these documents, please contact the SOTF Clerk, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102.

Audio recordings of the meeting of the Sunshine Ordinance Task Force are available at:  
<http://www.sfbos.org/index.aspx?page=9811>

For information concerning Sunshine Ordinance Task Force please contact by e-mail [sotf@sfgov.org](mailto:sotf@sfgov.org) or by calling (415) 554-7724.

### Public Comment

Public Comment will be taken before or during the Committee's consideration of each agenda item. Speakers may address the Task Force for up to three minutes on that item. During General Public Comment, members of the public may address the Task Force on matters that are within the Task Force's jurisdiction and are not on the agenda. 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 official file.

Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations.

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the hearing begins, written comments regarding the subject of the meeting or hearing;. These comments will be made a part of the official public record.

### Hearing Procedures

- |    |  |                      |
|----|--|----------------------|
| 1. | Complainant presents his/her facts and evidence  | 5 minutes            |
|    | Other parties of Complainant present facts and evidence  | Up to 3 minutes each |
| 2. | City responds  | 5 minutes            |
|    | Other parties of City respond  | Up to 3 minutes each |
|    | <i>Above total speaking times for Complainant and City to be the same.</i>                                   |                      |
| 3. | Matter is with the Task Force for discussion and questions.  |                      |
| 4. | Respondent and Complainant presents clarification/rebuttal   | 3 minutes            |
| 5. | Matter is with the Task Force for motion and deliberation.   |                      |
| 6. | Public comment (Excluding Complainant & City response, witnesses)  | Up to 3 minutes each |
| 7. | Vote by Task Force (Public comment at discretion of chair on new motion and/or on new motion if vote fails.) |                      |

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

### **Disability Access**

The hearing rooms in City Hall are wheelchair accessible. Assistive listening devices for the hearing rooms are available upon request with the SOTF Clerk. The nearest accessible BART station is Civic Center (Market/Grove/Hyde Streets). Accessible MUNI Metro lines are the F, J, K, L, M, N, T (exit at Civic Center or Van Ness Stations). MUNI bus lines also serving the area are the 5, 6, 9, 19, 21, 47, 49, 71, and 71L. For more information about MUNI accessible services, call (415) 701-4485. There is accessible parking in the vicinity of City Hall at Civic Center Plaza and adjacent to Davies Hall and the War Memorial Complex. Accessible curbside parking is available on Dr. Carlton B. Goodlett Place and Grove Street.

The following services are available on request 48 hours prior to the meeting; except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week: For American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please contact the SOTF Clerk at (415) 554-7724 to make arrangements for the accommodation. Late requests will be honored, if possible.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

### **Know Your Rights Under the Sunshine Ordinance**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102; phone (415) 554-7724; fax (415) 554-7854; or email [sotf@sfgov.org](mailto:sotf@sfgov.org).

Citizens may obtain a free copy of the Sunshine Ordinance by printing Chapter 67 of the San Francisco Administrative Code on the Internet, at <http://www.sfbos.org/sunshine>.

### **Cell Phones, Pagers and Similar Sound-Producing Electronic Devices**

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices (Chapter 67A of the San Francisco Administrative Code).

### **Lobbyist Registration and Reporting Requirements**

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code §2.100, et. seq] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at: 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 581-3100; fax (415) 252-3112; web site [www.sfgov.org/ethics](http://www.sfgov.org/ethics)

File No. 12056

SOTF Item No. 3

CAC Item No. \_\_\_\_\_

**SUNSHINE ORDINANCE TASK FORCE**  
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force (SOTF)

Date: June 5, 2013

Compliance and Amendments Committee (CAC)

Date: \_\_\_\_\_

**CAC/SOTF**

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| <input type="checkbox"/> | <input type="checkbox"/>            | Order of Determination             |
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Completed by: Andrea Ausberry Date May 29, 2013

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

\*An asterisked item represents the cover sheet to a document that exceeds 75 pages.  
The complete document is in the file.

SAN FRANCISCO SUNSHINE ORDINANCE COMPLAINT

Date: November 19, 2012; amended December 18, 2012.

Complainant: Allen Grossman  
111 30<sup>th</sup> Avenue  
San Francisco, CA 94121  
Facsimile: (415) 831-3721  
Email: [grossman356@mac.com](mailto:grossman356@mac.com)

Complaint against: John St. Croix, Executive Director  
San Francisco Ethics Commission.

Persons contacted: John St. Croix, Executive Director  
San Francisco Ethics Commission;  
Mr. Steven Massey, Information Technology Officer San  
Francisco Ethics Commission

Alleged violations: Failure to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Sections 67.21, subdivision (b), 67.27, subdivisions (a) and (b) and their required disclosure under Section 67.42, subdivision (b) (1) (i) and (iii).

Chronology/Documents:

October 3, 2012: Complainant sent the attached Records Request (Document #1) by Facsimile to Mr. St. Croix. The Records Request, stated in part:

"This is a request under the applicable provisions of California Public Records Act and the San Francisco Sunshine Ordinance ("Sunshine Ordinance") for copies of any and all public records, including those archived, in any form or media, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications, in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to:

"(1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the folk, ring Commission Notice:

Notice of Consideration of Proposed Regulations at the September 24, 2012  
Regular Meeting of the Ethics Commission

**SAN FRANCISCO SUNSHINE ORDINANCE COMPLAINT**

Date: November 19, 2012

Complainant: Allen Grossman  
111 30<sup>th</sup> Avenue  
San Francisco, CA 94121  
Facsimile: (415) 831-3721  
Email: grossman356@mac.com

Complaint against: John St. Croix, Executive Director  
San Francisco Ethics Commission.

Persons contacted: John St. Croix, Executive Director  
San Francisco Ethics Commission;  
Mr. Steven Massey, Information Technology Officer  
San Francisco Ethics Commission

Alleged violations: Failure to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Section 67.27, subdivisions (a) and (b) and their required disclosure under Section 67.42; subdivision (b) (1) (i) and (ii).

Chronology/Documents:

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"(1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the following Commission Notice:

Notice of Consideration of Proposed Regulations at the September 24, 2012 Regular Meeting of the Ethics Commission

At its regular meeting on Monday, September 24, 2012, at 5:30 p.m. in Room 400, City Hall, the San Francisco Ethics Commission will discuss draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force (SOTF) and provided guidance to staff for the development of the proposed amendments.

"(2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney."

October 12, 2012: Mr. Massey responded, on behalf of Mr. St. Croix, by email (Document #2) stating, in part:

"We have reviewed our files to identify records that are responsive to your request. Due to the volume of documents, I am unable to attach the responsive documents to this e-mail. The documents may be provided electronically on a compact disc. If you would like the Commission to provide the disc, there is a \$1.00 fee. If you would like to provide your own disc so that the documents can be stored, there is no fee.

"A few of the documents have been redacted pursuant to California Government Code section 6254.21, in accordance with San Francisco Administrative Code section 67.26. The redacted documents are in a separate folder named "Redacted."

*"We are withholding other documents in their entirety, pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030." [Emphasts Added.]*

October 21, 2012: Complainant sent the attached letter (Document #3) by Facsimile to Mr. Massey in which Complainant advised him that:

"There is no point in my considering whether any of these "confidentiality" protections – the attorney-client privilege and/or either of the (two) attorney work product doctrine(s) – are properly applied because you state that those exemptions apply to "other" public records, none of which you classify, name or otherwise identify. Attempting to do that would be a useless exercise in that I would have to assume how many records are withheld, specifically what kind of public record each one is and then determine whether or not I concur that one or two of those "protections" would apply.

"By combining several exemptions so that more than one of those exemptions could be applicable to each one and/or all of the withheld records, Mr. St. Croix has taken a position that is not defensible. It is incumbent on him to describe, in some comprehensible way, each of those withheld public records he claims is subject to the

attorney-client privilege exemption and each of those he claims is subject to either the absolute work product doctrine or the conditional work product doctrine.

"The response failed to mention several applicable provisions of the San Francisco Sunshine Ordinance, the most important of which is §67.24(b)(1), to wit:

§67.24 Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

Subsection (b) (1) provides, in part:

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(ii). A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

"Until I receive and review the copies of the records that are being made available to me, I can not determine whether any of those that I would expect should be included are not and, thus, may fall within one or both of subdivisions (ii) and (iii) of §67.24(b)(1). However, to the extent that any of the withheld records do fall within either of these subdivisions, they are not exempt by these express provisions of the Sunshine Ordinance."

November 1, 2012: Complainant sent the following email Mr. Massey (copy to Mr. St. Croix):

To: Steven.Massey@SFGOV.ORG  
 From: Allen Grossman <grossman356@mac.com>  
 Date: 11/01/2012 04:29PM  
 Cc: john.st.croix@sfgov.org  
 Subject: October 3, 2012 Records Request

Mr. Massey,

It has been 10 days since I sent you the attached October 21, 2012 letter by Facsimile. Since the letter raises some questions regarding the basis on which Mr. St. Croix's refused to make the copies of some unidentified public records available, I do think it



appropriate that he or you, on his behalf, respond to the letter. Ignoring the letter is not an appropriate response.

Allen Grossman

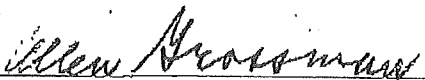
November 2, 2012 Mr. St. Croix responded by email (Document #4) as follows:

From: john.st.croix@sfgov.org  
Subject: Re: October 3, 2012 Records Request  
Date: November 2, 2012 3:04:50 PM PDT  
To: Allen Grossman <grossman356@mac.com>  
Cc: Steven.Massey@SFGOV.ORG

Mr. Grossman - This response is regarding your communication below and the attached letter to Steven Massey from you dated October 21, 2012. *You have already received all documents responsive to your request. We are not required to create documents that do not exist. I consider this matter closed. [Emphasis Added.]*

John St. Croix  
Executive Director, San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102-6053

Hearing: Complainant requests a public hearing before the Sunshine Ordinance Task Force.

  
Allen Grossman

Allen Grossman  
111 30<sup>th</sup> Avenue  
San Francisco, CA 94121-1005  
Email: grossman356@mac.com  
Phone: (415) 831-3720  
FAX: (415) 831-3721

VIA FACSIMILE

To: Mr. John St. Croix, Executive Director  
San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA. 94102-6053

Date: October 3, 2012

This is a request under the applicable provisions of California Public Records Act and the San Francisco Sunshine Ordinance ("Sunshine Ordinance") for copies of any and all public records, including those archived, in any form or media, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications, in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to:

(1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the following Commission Notice:

Notice of Consideration of Proposed Regulations at the September 24, 2012 Regular Meeting of the Ethics Commission

At its regular meeting on Monday, September 24, 2012, at 5:30 p.m. in Room 400, City Hall, the San Francisco Ethics Commission will discuss draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force (SOTF) and provided guidance to staff for the development of the proposed amendments.


(2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney.

In accordance with Section 67.25(d) of the Sunshine Ordinance, please provide the copies of any and all responsive public records as soon as reasonably possible on an incremental or "rolling"

basis.

If the requested records are kept electronically or in PDF format, please send them in their original format by email to my above email address. If the records are kept in some other format, please scan the relevant page(s) to PDF format and send them by email to my above email address.

This public records request is to be read broadly and any exemptions to disclosure of any public information in such public records are to be construed narrowly.



Allen Grossman

From: Steven.Massey@SFGOV.ORG  
Subject: Response to records request - October 3, 2012  
Date: October 12, 2012 2:57:40 PM PDT  
To: Allen Grossman <grossman356@mac.com>

Mr. Grossman,

On October 3, 2012, Executive Director St. Croix received the following request from you:

"...copies of any and all public records...in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to: (1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the following Commission Notice: Notice of Consideration of Proposed Regulations at the September 24, 2012 Regular Meeting of the Ethics Commission...(2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney."

You requested that the Ethics Commission send the records to your e-mail address.

We have reviewed our files to identify records that are responsive to your request. Due to the volume of documents, I am unable to attach the responsive documents to this e-mail. The documents may be provided electronically on a compact disc. If you would like the Commission to provide the disc, there is a \$1.00 fee. If you would like to provide your own disc so that the documents can be stored, there is no fee.

A few of the documents have been redacted pursuant to California Government Code section 6254.21, in accordance with San Francisco Administrative Code section 67.26. The redacted documents are in a separate folder named "Redacted."

We are withholding other documents in their entirety, pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030.

Please let me know whether you would like the Commission to provide the disc or whether you will provide your own. The responsive documents to your request are available for inspection and copying.

Sincerely,

Steven Massey

#2

Information Technology Officer  
CCSF Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102  
(P) 415-252-3108  
(F) 415-252-3112  
Steven.Massey@sfgov.org  
<http://www.sfethics.org>

Allen Grossman  
111 30<sup>th</sup> Avenue  
San Francisco, CA 94121-1005  
Tel: (415) 831-3720  
Fax: (415) 831-3721  
Email: grossman356@mac.com

October 21, 2012

BY FACSIMILE

Mr. Steven Massey  
Information Technology Officer  
CCSF Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

Re: October 3, 2012 Records Request

Dear Mr. Massey:

In your October 12, 2012 Email responding to the subject Records Request you advised me:

“We are withholding other documents in their entirety, pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030.”

My Records Request was directed to Mr. St. Croix, Executive Director of the Ethics Commission. Although the complete response - that is, the copies of public records you are making available to me (including those with redactions) as described in your email and notice that the decision to withhold public records from disclosure - came from you, I can properly assume that Mr. St. Croix approved the response and that he takes full responsibility for it. If otherwise, please advise me.

So that we are looking at the specific sections of the state statutes to which you refer as the basis for withholding “other documents”, I quote them in full on the Schedule attached to this letter. CPRA §6254(k) is not an exemption by itself, but incorporates state and federal law exemptions. Evidence Code §§952 and 954 create the “attorney-client privilege” and CCP §2018.30 creates two so-called “work product” doctrines, one absolute and the other conditional. Mr. St. Croix relies on these two exemptions to justify his withholding of certain unidentified public records. However, in the case of the conditional work product doctrine - §2018.30(b) - it is not clear whether it is even applicable when no litigation is involved.

There is no point in my considering whether any of these “confidentiality” protections - the attorney-client privilege and/or either of the (two) attorney work product doctrine(s) - are properly applied because you state that those exemptions apply to “other” public records, none of which you classify, name or otherwise identify. Attempting to do that would be a useless exercise in that I would have to assume how many records are withheld, specifically what kind of public record each

#3

one is and then determine whether or not I concur that one or two of those "protections" would apply.

By combining several exemptions so that more than one of those exemptions could be applicable to each one and/or all of the withheld records, Mr. St. Croix has taken a position that is not defensible. It is incumbent on him to describe, in some comprehensible way, each of those withheld public records he claims is subject to the attorney-client privilege exemption and each of those he claims is subject to either the absolute work product doctrine or the conditional work product doctrine.

The response failed to mention several applicable provisions of the San Francisco Sunshine Ordinance, the most important of which is §67.24(b)(1), to wit:

§67.24 Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

Subsection (b) (1) provides, in part:

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

Until I receive and review the copies of the records that are being made available to me, I can not determine whether any of those that I would expect should be included are not and, thus, may fall within one or both of subdivisions (ii) and (iii) of §67.24(b)(1). However, to the extent that any of the withheld records do fall within either of these subdivisions, they are not exempt by these express provisions of the Sunshine Ordinance.

§67.25 provides, in part:

"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..."

§67.27 provides, in part:

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. [Emphasis added.]

(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere. {Emphasis Added.}

(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.

Taken together these provisions require Mr. St. Croix, as the custodian of the requested records, to review each of the withheld records, provide some description of each (without necessarily disclosing any public information in it that he considers exempt) and then cite the specific statutory exemption that he claims exempts it or the redacted information from disclosure.

Before I pursue my Records Request any further, Mr. St. Croix is reminded that he cannot summarily deny my constitutionally protected right to access public records and public information with broad claims of exemptions to a group of varying types of public records contrary to what the CPRA and the Sunshine Ordinance were designed to prevent.

Very Truly Yours,

  
Allen Grossman



CPRA § 6254(k): Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following: (k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

Evidence Code §952: As used in this article, "confidential communication between client and lawyer" means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship.

Evidence Code §954: Subject to Section 912 and except as otherwise provided in this article, the client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer if the privilege is claimed by:

(a) The holder of the privilege;

(b) A person who is authorized to claim the privilege by the holder of the privilege;  
or

(c) The person who was the lawyer at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure.

...The word "persons" as used in this subdivision includes partnerships, corporations, limited liability companies, associations and other groups and entities.

Code of Civil Procedure §2018.030:

(a) A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.

(b) The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice.

MEMORANDUM

Date: May 28, 2013

To: Members, Sunshine Ordinance Task Force

Re: Complaint # 12056:  
Grossman vs. John St. Croix, Executive Director, SF Ethics Commission

My complaint and Mr. St. Croix's response are to be heard at SOTF's June 5, 2013 regular meeting. Currently the SOTF has nine members, two short of the statutorily required eleven. Under the SOTF current bylaws, the "affirmative vote of a majority of the members of the Task Force (six votes) shall be required for the approval of all substantive matters."

Determinations by the SOTF whether a respondent custodian agency, department or City officer responding to a complaint has or has not complied with the Sunshine Ordinance are "substantive matters" requiring approval by six votes irrespective of the number of SOTF members voting.

Following a hearing on the complaint, the SOTF's practice has been to consider a motion with respect to the complaint's claims of respondent's non-compliance with the Sunshine Ordinance. That motion requires the "aye" vote of at least six members that the respondent had not complied. Thus, when less than all eleven members are present and voting, the complainant needs more than a simple majority for such a motion to pass. If all nine current members attend the June 5 meeting and vote on my complaint, a two-thirds majority – six out of nine votes – will be required for a favorable determination. If only eight members attend and vote, the percentage rises to 75%; if only seven attend and vote, it is 87.5%. As a result, this combination of the six-vote rule and the formulation of the motion stack the deck against every complainant.

However, this combination is contrary to both the Sunshine Ordinance and the CPRA. *The Sunshine Ordinance and the CPRA both definitively provide that all public records are presumptively fully disclosable and the burden is on the custodian to prove, i.e., justify, the application of a specific exemption.*

Sunshine Ordinance:

§67.21(g): "In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies."

§67.27 JUSTIFICATION OF WITHHOLDING:

"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 or 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.”

CPRA:

§6255(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.”

Thus, the burden of proving, i.e., “justifying”, the refusal to disclose the public record is on the respondent, not on the complainant to disprove any claimed “justification”.

For that reason, the SOTF’s practice with respect to motions involving such non-compliance with the Sunshine Ordinance should be changed. The motion must be, in effect, that the respondent has justified the application of the claimed exemption or prohibition to the public record(s) requested, not that the complainant has proven that the records are not exempt from disclosure. If the motion is put in such terms, the six-vote rule will be consistent with applicable law, not contrary to it. It will also bring some fairness back into the process.

From: john.st.croix@sfgov.org  
Subject: Re: October 3, 2012 Records Request  
Date: November 2, 2012 3:04:50 PM PDT  
To: Allen Grossman <grossman356@mac.com>  
Cc: Steven.Massey@SFGOV.ORG

Mr. Grossman - This response is regarding your communication below and the attached letter to Steven Massey from you dated October 21, 2012. You have already received all documents responsive to your request. We are not required to create documents that do not exist. I consider this matter closed.

John St. Croix  
Executive Director, San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102-6053

-----Allen Grossman <grossman356@mac.com> wrote: -----  
To: Steven.Massey@SFGOV.ORG  
From: Allen Grossman <grossman356@mac.com>  
Date: 11/01/2012 04:29PM  
Cc: john.st.croix@sfgov.org  
Subject: October 3, 2012 Records Request

Mr. Massey,

It has been 10 days since I sent you the attached October 21, 2012 letter by Facsimile. Since the letter raises some questions regarding the basis on which Mr. St. Croix's refused to make the copies of some unidentified public records available, I do think it appropriate that he or you, on his behalf, respond to the letter. Ignoring the letter is not an appropriate response.

Allen Grossman

[attachment "Ltr Massey 10-21-2012.pdf" removed by John St.Croix/  
ETHICS/SFGOV]

Allen Grossman  
111 30<sup>th</sup> Avenue  
San Francisco, CA 94121-1005  
Tel: (415) 831-3720  
Fax: (415) 831-3721  
Email: grossman356@mac.com

December 18, 2012

By Facsimile and Email

Ms. Andrea Ausberry, Administrator  
Sunshine Ordinance Task Force  
City Hall - Room 244  
1 Dr. Carlton B. Goodlett Place San  
Francisco, CA 94102-4689

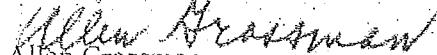
RE: Sunshine Complaint No. 12056

Dear Ms. Ausberry;

When reviewing my Complaint and my original records request I found I had to revise the "Alleged Violations" section to conform to my request. Since I wasn't sure how you would want it handled, I decided to send you a corrected first page of the Complaint with that changed section, which you can substitute for the first page. It is attached.

Please let me know if that is not how you want it handled. If acceptable, please send me a copy of yours to Mr. St. Croix and the other persons who received the original version.

Thanks,

  
Allen Grossman

ALLEN GROSSMAN  
111 30<sup>th</sup> AVENUE  
SAN FRANCISCO, CALIFORNIA 94121-1005  
TELEPHONE: (415) 831-3720  
FACSIMILE: (415) 831-3721  
Email: grossman356@mac.com

**FACSIMILE TRANSMITTAL**

**To:** Andrea S. Ausberry  
Administrator  
Sunshine Ordinance Task Force

**FAX Number:** (415) 554 -5163

**Phone Number:** (415) 554 -7724

**Number of Pages:** 3, including cover sheet

**Date:** December 18, 2012

**From:** Allen Grossman

**Message:** Letter + Amended Page 1 dated today re #12056.

**IF YOU DO NOT RECEIVE ALL PAGES OF THIS TRANSMISSION,  
PLEASE CALL (415) 831-3720 AS SOON AS POSSIBLE**

CONFIDENTIALITY NOTE: The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the receiver of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

TRANSMISSION VERIFICATION REPORT

TIME : 12/18/2012 09:03  
NAME : SFUFO/GROSSMAN  
FAX : 4158913721  
TEL : 4158313720  
SER.# : 60J395977

DATE, TIME	12/18 09:02
FAX NO./NAME	5545163
DURATION	00:01:25
PAGE(S)	03
RESULT	OK
MODE	STANDARD

ALLEN GROSSMAN  
 111 30<sup>th</sup> AVENUE  
 SAN FRANCISCO, CALIFORNIA 94121-1005  
 TELEPHONE: (415) 831-3720  
 FACSIMILE: (415) 831-3721  
 Email: grossman356@mac.com

*RESENDING*  
 FACSIMILE TRANSMITTAL

**To:** Andrea S. Ausberry  
 Administrator  
 Sunshine Ordinance Task Force

**FAX Number:** (415) 554 -5163

**Phone Number:** (415) 554 -7724

**Number of Pages:** 14, including cover sheet

**Date:** November 19, 2012

**From:** Allen Grossman

**Message:** Complaint against John St. Croix,  
 Executive Director, Ethics Commission

**IF YOU DO NOT RECEIVE ALL PAGES OF THIS TRANSMISSION,  
 PLEASE CALL (415) 831-3720 AS SOON AS POSSIBLE**

CONFIDENTIALITY NOTE: The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the receiver of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.



TRANSMISSION VERIFICATION REPORT

TIME : 11/19/2012 10:45  
NAME : SFUFC/GROSSMAN  
FAX : 4158313721  
TEL : 4158313720  
SER.# : G0J395977

DATE, TIME	11/19 10:38
FAX NO./NAME	5545163
DURATION	00:06:49
PAGE(S)	14
RESULT	OK
MODE	STANDARD



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

JAMIENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
COMMISSIONER

PAUL A. RENNE  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

### Via E-Mail

December 6, 2012.

Andrea Ausberry, Administrator  
Sunshine Ordinance Task Force  
City Hall – Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**RE: Sunshine Complaint No. 12056**

Dear Ms. Ausberry:

On November 29, 2012, the Ethics Commission received notice of Case No. 12056 (*Allen Grossman v John St. Croix, Executive Director, Ethics Commission*). In his complaint, Mr. Grossman alleged that Mr. St. Croix failed “to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Section 67.27, subdivisions (a) and (b) and their required disclosure under Section 67.42, subdivision (b)(1)(i) and (ii).”

### Background

On October 3, 2012, Mr. Grossman faxed a public records request to the Ethics Commission for the following:

“...copies of any and all public records...in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to: (1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the following Commission Notice: Notice of Consideration of Proposed Regulations at the September 24, 2012 Regular Meeting of the Ethics Commission...(2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney.”

Steven Massey responded to this request on October 12, 2012. He provided 127 documents electronically; six had been partially redacted. He also informed Mr. Grossman that the Commission was “withholding other documents in their entirety,

pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030.”

On October 21, 2012, Mr. Grossman faxed a letter to Mr. Massey. He stated that it was “incumbent on [Mr. St. Croix] to describe, in some comprehensible way, each of those withheld public records he claims is subject to the attorney-client privilege exemption and each of those he claims is subject to either the absolute work product doctrine or the conditional work product doctrine.” Mr. Grossman referenced Sunshine Ordinance sections 67.24(b)(ii) and (iii), which describe specific records that are subject to disclosure, notwithstanding any exemptions otherwise provided by law. Mr. Grossman noted that if any of the withheld records fall within either of the subsections, then the records “are not exempt by these express provisions of the Sunshine Ordinance.”

On November 1, 2012, Mr. Grossman sent an e-mail to Mr. Massey about his October 21, 2012 letter that “raises some questions regarding the basis on which Mr. St. Croix’s refused to make the copies of some unidentified public records available...Ignoring the letter is not an appropriate response.”

On November 2, 2012, I responded via e-mail. I informed Mr. Grossman that he had already received the documents responsive to his request and that the Commission is not required to create documents that do not exist.

On or about November 19, 2012, Mr. Grossman filed this complaint with the Sunshine Ordinance Task Force.

#### Applicable Law

##### SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.

Notwithstanding a department’s legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

...

##### (b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

##### SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

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 or elsewhere.

...

#### Analysis

Mr. Grossman first alleges that I failed “to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Section 67.27, subdivisions (a) and (b).” Mr. Grossman has misinterpreted Sunshine Ordinance sections 67.27(a) and (b). There is no requirement in those subsections that a responding department must “demonstrat[e] that each such unidentified withheld record is exempt.” According to the *Good Government Guide: 2010-2011 Edition* (“GGG”), published by the Office of the City Attorney, the law does not require a responding department withholding records to create a privilege log identifying the withheld records. (See GGG, p. 86.)

Sunshine Ordinance section 67.27 requires that any withholding of information 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 or elsewhere...”

In its October 12, 2012 e-mail response to Mr. Grossman, staff provided the required justification of withholding of information, citing California Government Code section 6254(k); California Evidence Code sections 952 and 954; and California Code of Civil Procedure section 2018.030. This written justification was made in accordance with both Sunshine Ordinance section 67.27(a) and section 67.27(b). Mr. Grossman even italicized staff’s written justification on page 2 of his complaint. As the Ethics Commission is not required to create documents that do not exist, there were no additional documents for staff to provide that were responsive to his October 3, 2012 request. Therefore, I respectfully request that the Sunshine Ordinance Task Force find no violation, as staff has provided Mr. Grossman with a written justification of withholding of records in a timely manner, in accordance with Sunshine Ordinance section 67.27(a) and (b).

Secondly, Mr. Grossman also appears to allege that I failed to disclose documents that were required to be disclosed under “Section 67.42, subdivision (b)(1)(i) and (ii).” Section 67.42 of the Sunshine Ordinance does not exist. Therefore, I will respond to this allegation under the assumption that Mr. Grossman intended to reference section 67.24(b)(1)(i) and (ii).

In his October 21, 2012 letter (which Mr. Grossman attached as “Document #3” to his complaint), Mr. Grossman stated that the October 12, 2012 “response failed to mention several applicable provisions of the San Francisco Sunshine Ordinance, the most important of which is §67.24(b)(1)...” It is unclear what law requires that staff mention this particular provision of the

Sunshine Ordinance in its response to his October 3, 2012 records request. Sunshine Ordinance section 67.24(b)(1) identifies public information that must be disclosed. There is no requirement that a responding party specifically mention it in its response to a public records request.

In responding to all public record requests, staff thoroughly reviews the Commission's files to ensure that we identify all records that are responsive to the request. This review includes a review for any documents subject to disclosure under Sunshine Ordinance subsections 67.24(b)(1)(i) and (ii). Mr. Grossman appears to have made an assumption that documents subject to disclosure under these subsections were withheld. That is not the case.

Mr. Grossman received all responsive documents to his request that were subject to disclosure. He received these documents in the format requested and in a timely manner.

Therefore, as Mr. Grossman received all documents subject to disclosure and as staff justified the withholding of information in its October 12, 2012 e-mail response in accordance with Sunshine Ordinance 67.27, I respectfully request that the Sunshine Ordinance Task Force dismiss this matter:

Sincerely,

*/s/ John St. Croix*

John St. Croix  
Executive Director

Cc (e-mail): Allen Grossman, Complainant

Ausberry, Andrea

---

From: Allen GROSSMAN [grossman356@me.com]  
Sent: Monday, March 18, 2013 4:02 PM  
To: sunshinechairgrant@gmail.com  
Cc: SOTF; St.Croix, John  
Subject: SOTF Complaint #12056

Dear Chair Grant,

This complaint was refiled on November 29, 2012. At that time, I expected it would be heard with a month or two as had been the SOTF's prior practice with the other complaints I filed over a period of four or five years. The SOTF's practice had been to observe the requirements of Section 67.21(e) of the Sunshine Ordinance that requires the SOTF to inform the complainant of its determination "no later than 45 days" from when the petition (complaint) is received. That section is quoted below.

On February 25, I sent the SOTF Administrator an email requesting that my complaint #12056 be put on the March 6, 2013 agenda -- some 98 days after the second filing. I asked that she take that up with you. As you know, my complaint was not put on the agenda.

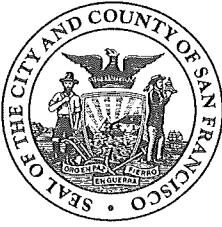
In any case, my wife and I are leaving for a long planned five week vacation on April 3, the date of your next regularly scheduled meeting. It does not appear there will be a special SOTF meeting before then. We will still be away on May 1, as well, when the following regular meeting is scheduled. That means that the hearing on my complaint will have to wait until the June SOTF meeting, unless a May Special Meeting is called after May 9th.

For that reason, I would appreciate your setting the hearing of my complaint for the June meeting, assuming Mr. St. Croix is available.

Thank You,

Allen Grossman

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public.



**SUNSHINE ORDINANCE TASK FORCE  
CITY AND COUNTY OF SAN FRANCISCO  
MINUTES**

**Hearing Room 408  
City Hall, 1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689**

**June 5, 2013 – 4:00 PM**

**Regular Meeting**

**Members:** Kitt Grant (Chair), Louise Fischer (Vice-Chair),  
Richard Knee, Allyson Washburn, David Pilpel,  
David Sims, Todd David, Chris Hyland, Bruce Oka

**1. CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES**

The meeting was called to order at 4:19 p.m. Chair Grant was noted absent. There was a quorum.

Administrator Andrea Ausberry announced a request from the Complainant and Respondent for File No. 12055 to be continued to August 2013.

**Member Pilpel, seconded by Member Knee, moved to CONTINUE File No. 12055 to August 2013.**

**Public Comment:**

None.

**The motion PASSED without objection.**

The Administrator announced a request from the Complainant for File Nos. 13005 and 13011 to be continued to the July 2013.

**Member David, seconded by Member Knee moved to CONTINUE File Nos. 12005 and 13011 to July.**

**Public Comment:**

None.

**The motion PASSED by the following vote:**

Ayes: 8 - Knee, Washburn, Pilpel, Sims, David, Hyland, Oka, Fischer

Noes: 0

Absent: 1 - Grant

2. **File No. 12055:** Complaint filed by Wood Robbins LLP, representing Pacific Polk Properties, LLC against Dennis Herrera, City Attorney for allegedly not producing documents pertaining to the project at 1601 Larkin Street

The Task Force continued the item to August 2013, under Item No. 1 (Agenda Changes).

3. **File No. 12056:** Complaint filed by Allen Grossman against John St. Croix, Executive Director, Ethics Commission for allegedly failing to justify withholding unidentified public records as exempt under provisions of the Sunshine Ordinance

**Member Knee, seconded by Member Oka, moved to find jurisdiction.**

**Public Comment:**

None.

**The motion PASSED without objection.**

Allen Grossman (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers in support of Complainant. John St. Croix, Executive Director, Ethics Commission (Respondent), provided an overview of the Ethics Commission's defense and requested the Task Force to dismiss the complaint. There were no speakers in support of Respondent. A question and answer period followed. Respondent waived rebuttal opportunity. Complainant provided a rebuttal and again requested the Task Force find violations.

**Member Pilpel, seconded by Member David, moved to CONTINUE File No. 12056 to July meeting.**

**Public Comment:**

None.

**The motion FAILED by the following vote:**

Ayes: 2 - Pilpel, David,

Noes: 6 - Knee, Washburn, Sims, Hyland, Oka, Fischer

Absent: 1 - Grant



**Member Washburn, seconded by Member Knee, moved to find the records disclosable under Sunshine Ordinance Section 67.21(b).**

**Public Comment:**

Peter Warfield expressed support of the motion.

**The motion PASSED by the following vote:**

Ayes: 6 - Knee, Washburn, Sims, Hyland, Oka, Fischer

Noes: 2 - Pilpel, David

Absent: 1 – Grant

**Member Washburn, seconded by Member Knee, moved to find the records disclosable under Sunshine Ordinance Section 67.24(b)(1).**

**Public Comment:**

Peter Warfield expressed support of the motion.

**The motion FAILED by the following vote:**

Ayes: 5 - Knee, Washburn, Sims, Hyland, Oka

Noes: 3 - Pilpel, David, Fischer

Absent: 1 - Grant

Member Fischer, seconded by Member David, moved to rescind the previous vote.

**Public Comment:**

None.

**The motion PASSED without objection.**

**Member Fischer, seconded by Member David, moved to find the records disclosable under Sunshine Ordinance Section 67.24(b)(1); referral to Compliance and Amendments Committee.**

**Public Comment:**

Peter Warfield spoke in objection to the motion; Paula Datesh spoke in support of the motion.

**The motion PASSED by the following vote:**

Ayes: 6 - Knee, Washburn, Sims, Hyland, Oka, Fischer

Noes: 2 - Pilpel, David

Absent: 1 – Grant

**MEETING RECESS - 6:30 p.m. to 6:40 p.m.**

4. **Public Comment:**  
Paula Datesh expressed concern with the Arts Commission making false allegations against her;  
Peter Warfield expressed concern with the referral of his complaint from Education, Outreach and Development to the Task Force not agendaized for its June meeting;  
Charles Pitts asked when the Task Force would make recommendations for amendments to the Sunshine Ordinance for the ballot.
5. **File No. 12059:** Complaint filed by Supreet Pabla, SEIU Local 1021 against the Human Services Agency for allegedly failing to provide records requested relevant to the representation of the bargaining unit's employees.

**Member Knee, seconded by Member Oka, moved to find jurisdiction.**

**Public Comment:**

None.

**The motion PASSED without objection.**

Supreet Pabla, SEIU Local 1021 (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers in support of Complainant. The Respondent was not present for the hearing. A question and answer period followed.

**Member Knee, seconded by Member David, moved to find the Human Services Agency in violation of Sunshine Ordinance Sections 67.21(b) for failing to adhere to records request within timeframe; 67.21(e) for Respondent's failure to attend the hearing proceedings and explain the basis for its decision to withhold the records requested; 67.26(c) for failing to keep withholding to a minimum; 67.27 for failing to justify withholding; and 67.29-7 for failing to maintain its correspondence and records; referral to Compliance and Amendments Committee.**

**Public Comment:**

None.

**The motion PASSED by the following vote:**

Ayes: 8 - Knee, Washburn, Pilpel, Sims, David, Hyland, Oka, Fischer

Noes: 0

Absent: 1 – Grant

6. **File No. 13005:** Complaint filed by Paula Datesh against the Arts Commission for allegedly failing to respond to an Immediate Disclosure Request for records pertaining to the operations of the Arts Commission.

The Task Force continued the item to August 2013, under Item No. 1 (Agenda Changes).

7. **File No. 13011:** Complaint filed by Paula Datesh against the Arts Commission for allegedly not providing documents relating to Evelyn Russell, former Arts Commission Secretary.

The Administrator announced a request from the Complainant for File Nos. 13005 and 13011 to be continued to the July 2013, meeting.

**Member David, seconded by Member Knee moved to CONTINUE File Nos. 12005 and 13011 to July.**

**Public Comment:**

None.

**The motion PASSED by the following vote:**

Ayes: 8 - Knee, Washburn, Pilpel, Sims, David, Hyland, Oka, Fischer

Absent: 1 - Grant

8. Motion (a) to communicate to the appropriate State government officials the Task Force's opposition to proposals in the State's draft budget for Fiscal Year 2013-2014 to (1) impose fees for access to court records and (2) halt State reimbursements to local governments for expenses incurred in complying with State public-records laws; and (b) to inform the local news media of said communications.

**Member Knee, seconded by Member Oka, moved to send a letter to the Governor and California State Senators stating the Task Force's opposition to the State budget proposals and to send a press release to San Francisco community based news papers.**

**Public Comment:**

None.

**The motion PASSED by the following vote:**

Ayes: 7 - Knee, Washburn, Sims, David, Hyland, Oka, Fischer

Noes: 1 - Pilpel

Absent: 1 - Grant

9. **Approval of Minutes from the January 16, 2013 Special Meeting.**

**Member Knee, seconded by Member Hyland, moved to CONTINUE items 9 through 13 to July 2013.**

**Public Comment:**

None.

**The motion PASSED without objection.**

10. **Approval of Minutes from the February 6, 2013 Regular Meeting**

Member Knee, seconded by Member Hyland, moved to CONTINUE items 9 through 13 to July 2013.

**Public Comment:**

None.

The motion PASSED without objection.

11. Approval of Minutes from the March 6, 2013 Regular Meeting.

Member Knee, seconded by Member Hyland, moved to CONTINUE items 9 through 13 to July 2013.

**Public Comment:**

None.

The motion PASSED without objection.

12. Approval of Minutes from the April 3, 2013 Regular Meeting.

Member Knee, seconded by Member Hyland, moved to CONTINUE items 9 through 13 to July 2013.

**Public Comment:**

None.

The motion PASSED without objection.

13. Approval of Minutes from the May 1, 2013 Regular Meeting.

Member Knee, seconded by Member Hyland, moved to CONTINUE items 9 through 13 to July 2013.

**Public Comment:**

None.

The motion PASSED without objection.

14. Report: Compliance and Amendments Committee meeting of April 16, 2013.

Member Washburn, Chair of the Compliance and Amendments Committee, reported on the April 16, 2013 meeting on behalf of the Compliance and Amendments Committee.

**Public Comment:**

None.

15. Report: Education, Outreach and Training Committee meetings of April 29, 2013 and May 13, 2013.

Member Pilpel, Chair of the Education, Outreach and Training Committee, reported on the April 29, 2013, and May 13, 2013, meetings on behalf of the Education, Outreach and Training Committee.

**Public Comment:**

None.

16. **Administrator's Report.**

Report was given Andrea Ausberry, Sunshine Ordinance Task Force Administrator, on behalf of the Sunshine Ordinance Task Force Office.

**Public Comment:**

None.

17. **Announcements, Comments, Questions, and Future Agenda Items.**

Member Knee shared the status of Senate Bill 52 sponsored by Leno and Hill, which would require campaign ads and website to list the top sources of campaign funding and Assembly Bill 400 sponsored by Assembly Member Paul Fong which would require Petition circulators to have available a list of the top source of campaign funding.

**Public Comment:**

None.

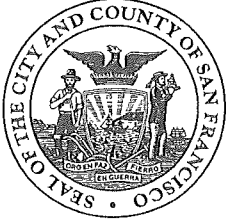
18. **ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:38 p.m.

APPROVED: April 30, 2014



Victor Young  
Administrator  
Sunshine Ordinance Task Force



**SUNSHINE ORDINANCE TASK FORCE**  
**Compliance and Amendments Committee**  
**CITY AND COUNTY OF SAN FRANCISCO**  
**AGENDA**

Hearing Room 408  
City Hall, 1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

August 20, 2013 – 4:00 P.M.

**Regular Meeting**

**Members:** Allyson Washburn (Chair),  
Richard Knee, Kitt Grant

1. **CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES**
2. **Adoption of July 16, 2013, Regular Meeting Minutes.** (Discussion and Action)  
*(attachment) (approximately 5 minutes)*
3. **File No. 12056:** Hearing on the status of the Order of Determination of Allen Grossman against John St. Croix, Executive Director, Ethics Commission for allegedly failing to justify withholding unidentified public records as exempt under provisions of the Sunshine Ordinance. (Discussion and Action) *(attachment) (approximately 30 minutes)*
4. **File No. 12059:** Hearing on the status of the Order of Determination of Supreet Pabla, SEIU Local 1022 against Human Services Agency for allegedly failing to provide records requested relevant to the representation of the bargaining unit's employees. (Discussion and Action) *(attachment) (approximately 30 minutes)*
5. **Public Comment:** Members of the public may address the Compliance and Amendments Committee on matters that are within Sunshine Ordinance Task Force's jurisdiction but not on today's agenda. (No Action). **Public Comment shall be taken one hour after meeting convenes.**
6. **Administrator's Report.** (Discussion and Action) *(approximately 5 minutes)*
7. **Announcements, Comments, Questions, and Future Agenda Items.** (No Action)
8. **ADJOURNMENT**

### Agenda Item Information

Each item on the agenda may include: 1) Department or Agency cover letter and/or report; 2) Public correspondence; 3) Other explanatory documents. For more information concerning agendas, minutes, and meeting information, such as these documents, please contact the SOTF Clerk, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102.

Audio recordings of the meeting of the Sunshine Ordinance Task Force are available at:  
<http://www.sfbos.org/index.aspx?page=9811>

For information concerning Sunshine Ordinance Task Force please contact by e-mail [sotf@sfgov.org](mailto:sotf@sfgov.org) or by calling (415) 554-7724.

### Public Comment

Public Comment will be taken before or during the Committee's consideration of each agenda item. Speakers may address the Task Force for up to three minutes on that item. During General Public Comment, members of the public may address the Task Force on matters that are within the Task Force's jurisdiction and are not on the agenda. 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 official file.

Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations.

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the hearing begins, written comments regarding the subject of the meeting or hearing. These comments will be made a part of the official public record.

### Hearing Procedures

- |    |  |                      |
|----|--|----------------------|
| 1. | Complainant presents his/her facts and evidence  | 5 minutes            |
|    | Other parties of Complainant present facts and evidence  | Up to 3 minutes each |
| 2. | City responds  | 5 minutes            |
|    | Other parties of City respond  | Up to 3 minutes each |
|    | <i>Above total speaking times for Complainant and City to be the same.</i>                                   |                      |
| 3. | Matter is with the Task Force for discussion and questions.  |                      |
| 4. | Respondent and Complainant presents clarification/rebuttal   | 3 minutes            |
| 5. | Matter is with the Task Force for motion and deliberation.   |                      |
| 6. | Public comment (Excluding Complainant & City response, witnesses)  | Up to 3 minutes each |
| 7. | Vote by Task Force (Public comment at discretion of chair on new motion and/or on new motion if vote fails.) |                      |

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

### Disability Access

The hearing rooms in City Hall are wheelchair accessible. Assistive listening devices for the hearing rooms are available upon request with the SOTF Clerk. The nearest accessible BART station is Civic Center (Market/Grove/Hyde Streets). Accessible MUNI Metro lines are the F, J, K, L, M, N, T (exit at Civic Center or Van Ness Stations). MUNI bus lines also serving the area are the 5, 6, 9, 19, 21, 47, 49, 71, and

71L. For more information about MUNI accessible services, call (415) 701-4485. There is accessible parking in the vicinity of City Hall at Civic Center Plaza and adjacent to Davies Hall and the War Memorial Complex. Accessible curbside parking is available on Dr. Carlton B. Goodlett Place and Grove Street.

The following services are available on request 48 hours prior to the meeting; except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week: For American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please contact the SOTF Clerk at (415) 554-7724 to make arrangements for the accommodation. Late requests will be honored, if possible.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

### **Know Your Rights Under the Sunshine Ordinance**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102; phone (415) 554-7724; fax (415) 554-7854; or email [sotf@sfgov.org](mailto:sotf@sfgov.org).

Citizens may obtain a free copy of the Sunshine Ordinance by printing Chapter 67 of the San Francisco Administrative Code on the Internet, at <http://www.sfbos.org/sunshine>.

### **Cell Phones, Pagers and Similar Sound-Producing Electronic Devices**

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices (Chapter 67A of the San Francisco Administrative Code).

### **Lobbyist Registration and Reporting Requirements**

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code §2.100, et. seq] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at: 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 581-3100; fax (415) 252-3112; web site [www.sfgov.org/ethics](http://www.sfgov.org/ethics).



File No. 12056

SOTF Item No. \_\_\_\_\_

CAC Item No. 3

**SUNSHINE ORDINANCE TASK FORCE**  
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force (SOTF) Date: \_\_\_\_\_

Compliance and Amendments Committee (CAC) Date: August 20, 2013

**CAC**

- Memorandum
- Order of Determination
- Complaint and Supporting documents
- Respondent's Response
- Minutes
- 
- 
- 
- 
- 
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- 
- 

**OTHER**

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Completed by: Andrea Ausberry Date August 15, 2013

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

\*An asterisked item represents the cover sheet to a document that exceeds 75 pages.  
The complete document is in the file.



## ORDER OF DETERMINATION

June 24, 2013

### DATE THE DECISION ISSUED

June 5, 2013

*ALLEN GROSSMAN VS. JOHN ST. CROIX, ETHICS COMMISSION (CASE NO. 12056)*

### FACTS OF THE CASE

Allen Grossman ("Complainant") alleges that John St. Croix, in his role as Executive Director of the Ethics Commission ("CAO"), violated public records laws by failing to fully respond to his public records request dated October 3, 2012.

### COMPLAINT FILED

On November 19, 2012, Complainant filed this complaint against St. Croix, alleging violations of the public records laws, including specifically Sunshine Ordinance ("Ordinance") Sections 67.21(b), 67.27(a) & (b), and 67.24(b)(1)(i) & (iii).

### HEARING ON THE COMPLAINT

On June 5, 2013, Complainant Allen Grossman appeared before the Task Force and presented his claim. Respondent, John St. Croix, Executive Director, Ethics Commission, presented the Ethics Commission's defense.

The issue in the case is whether the Respondent violated Sections 67.21, 67.24, and 67.27 of the Ordinance and/or Sections 6253 and 6254 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 Mr. Grossman to be persuasive and finds Sections 67.21(b) and 67.24(b)(1) of the Ordinance to be applicable in this case. The Task Force does not find the testimony provided by John St. Croix, Executive Director, Ethics Commission, persuasive to this case.

### DECISION AND ORDER OF DETERMINATION

The Task Force finds that the records requested from the Ethics Commission are disclosable public records and finds that Respondent has violated Section 67.21(b) of the Sunshine Ordinance for failure to provide the records within ten days following receipt of a request and Section 67.24(b)(1) of the Sunshine Ordinance for withholding records subject to disclosure. John St. Croix, Executive Director, Ethics Commission, shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on August 20, 2013.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on June 5, 2013, by the following vote:

(Washburn/Knee) (Violation 67.21(b))

Ayes: Knee, Washburn, Sims, Hyland, Oka, Fischer

Noes: Pilpel, David


Absent: Grant

(Fischer/David) (Violation 67.24(b)(1))

Ayes: Knee, Washburn, Sims, Hyland, Oka, Fischer

Noes: Pilpel, David

Absent: Grant



Kitt Grant, Chair  
Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney  
Allen Grossman, Complaint  
John St. Croix, Executive Director Respondent



DENNIS J. HERRERA  
City Attorney

JERRY THREET  
Deputy City Attorney

Direct Dial: (415) 554-3914  
Email: jerry.threet@sfgov.org

## MEMORANDUM

TO: Sunshine Ordinance Task Force  
FROM: Jerry Threet  
Deputy City Attorney  
DATE: June 3, 2013  
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

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### COMPLAINT

Allen Grossman ("Complainant") alleges that John St. Croix, in his role as Executive Director of the Ethics Commission ("CAO"), violated public records laws by failing to fully respond to his public records request dated October 3, 2012.

### COMPLAINANT FILES COMPLAINT:

On November 19, 2012, Complainant filed this complaint against St. Croix, alleging violations of the public records laws, including specifically Sunshine Ordinance ("Ordinance") Sections 67.21(b), 67.27(a) & (b), and 67.24(b)(1)(i) & (iii).

### JURISDICTION

The Ethics Commission ("Ethics") is a City department, and therefore the Task Force generally has jurisdiction to hear a public records complaint against it and its staff. Ethics does not contest jurisdiction.

### APPLICABLE STATUTORY SECTION(S)

#### Section 67 of the San Francisco Administrative Code:

- Section 67.21 governs the process for gaining access to public records.
- Section 67.24 governs categories of required disclosure that may exceed those of CPRA.
- Section 67.27 governs written justifications for withholding of records.

#### Section 6250 et seq. of Cal. Gov't Code (PRA)

- Section 6253 governs time limits for responding to public records requests.
- Section 6254 governs exemptions from disclosure.

### BACKGROUND

Complainant sent a records request to St. Croix on October 3, 2012, requesting records related to Ethics' draft amendments to its regulations governing the handling of complaints related to violations of the Sunshine Ordinance (see Complaint for a more exact and detailed description of the request).

On October 12, 2012, Steven Massey responded on behalf of Ethics and St. Croix by email. The email explained that voluminous responsive documents would be provided on a compact disk, as it was not possible to send such volume via email. Massey's email also

**MEMORANDUM**

TO: Sunshine Ordinance Task Force  
DATE: June 3, 2013  
PAGE: 2  
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

---

explained that Ethics had redacted some information on some documents “pursuant to California Government Code Section 6254.21, in accordance with [ ] Administrative Code Section 67.26”, which were placed in a separate folder on the disk marked “redacted”. The email further explained that some documents were withheld “in their entirety pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030.” (These are state statutes providing for the attorney work product privileges and the attorney-client privileges.)

Complainant responded via facsimile letter on October 21, 2012. Complainant’s letter mainly asserts that Massey’s invocation of the attorney work product and attorney client privileges to justify withholding an unknown number of otherwise undescribed documents, was not a proper response to his records request. The letter goes on to state that a proper response “must describe, in some comprehensible way, each of those withheld public records he claims is subject to the [asserted privilege].” The letter also asserts that any records that fall within Section 67.24(b)(1) of the Ordinance are not exempt from disclosure, even if they otherwise might constitute attorney-client or attorney work product privileged material. (Section 67.24(b)(1)(iii) covers mainly attorney-client communications related to the state and local public records laws.) The letter requested a response to these points.

On November 1, 2012, Complainant again requested a supplemental response from Ethics.

On November 2, 2012, Mr. St. Croix responded on behalf of Ethics, stating, “You have already received all documents responsive to your request. We are not required to create documents that do not exist. I consider this matter closed.”

On November 19, 2012, Complainant filed this complaint, setting out the above allegations.

On December 6, 2012, Mr. St. Croix responded on behalf of Ethics to the Complaint. The letter states that Ethics provided 127 documents to Complainant in response to his request, 6 of which has been partially redacted. The letter also argues that, in contrast to Complainant’s position, there “is no requirement in [Sunshine Ordinance sections 67.27(a) and (b)] that a responding department must ‘demonstrat[e] that each such unidentified withheld record is exempt.’” The letter states that Ethics’ response to the records request provided written justification for withholding public information by citing to specific statutes, as required by the Ordinance. The letter further states that Ethics withheld no documents that would be subject to the provisions of Section 67.24(b)(1) of the Ordinance. The letter concludes that Complainant received all documents that were subject to disclosure in a timely manner and in accordance with the requirements of law.

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

- What public records or information, if any, does Complainant allege is in the custody of Ethics that should have been provided but has not been provided?
- How many records were withheld in their entirety by Ethics? What was the nature of these documents?

## MEMORANDUM

TO: Sunshine Ordinance Task Force  
DATE: June 3, 2013  
PAGE: 3  
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

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**LEGAL ISSUES/LEGAL DETERMINATIONS:**

- Did Ethics timely respond to the request?
- Did Ethics fail to provide discloseable public records or information within its custody?
- Is Ethics required to provide Complainant a “privilege log” for records that are withheld?

**SUGGESTED ANALYSIS****Attorney-Client Privilege**

Section 67.27 of the Sunshine Ordinance allows for "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, [or for] withholding on the basis that disclosure is prohibited by law, . . . [citing] the specific statutory authority." Records that contain attorney-client privileged information are protected from disclosure as a public record under Government Code §§ 6254(k) and 6276.04, and Evid. C. § 954. Gov't. Code § 6254(k) exempts from disclosure "[r]ecords, the disclosure of which is exempted or prohibited pursuant to [ ] state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Gov't. Code § 6276.04 includes among its specifically enumerated state laws exempting records from disclosure: "Attorney-client confidential communication, Section 6068, Business and Professions Code and Sections 952, 954, 956, 956.5, 957, 958, 959, 960, 961, and 962, Evidence Code."

It is clear from these provisions that attorney-client privileged information is generally protected from disclosure under both the Public Records Act and the Sunshine Ordinance. In *Roberts v. City of Palmdale* (1993) 5 Cal.4<sup>th</sup> 363, the California Supreme Court held that the privilege protects from disclosure confidential communications between a city attorney and its municipal client even when not provided in connection to litigation. *City of Palmdale, supra*, 5 Cal.4<sup>th</sup> at 371. In discussing its holding, the court stated:

Open government is a constructive value in our democratic society. [ ] The attorney-client privilege, however, also has a strong basis in public policy and the administration of justice. The attorney-client privilege has a venerable pedigree that can be traced back 400 years. "[T]he privilege seeks to insure the 'right of every person to freely and fully confer and confide in one having knowledge of the law, and skilled in its practice, in order that the former may have adequate advice[.]'"

. . . .

A city [department] needs freedom to confer with its lawyers confidentially in order to obtain adequate advice, just as does a private citizen who seeks legal counsel [ ]. The public interest is served by the privilege because it permits local government agencies to seek advice that may prevent the agency from becoming embroiled in litigation, and it may permit the agency to avoid unnecessary conflict with various members of the public.

*City of Palmdale, supra*, 5 Cal.4<sup>th</sup> at 380-381.

## MEMORANDUM

TO: Sunshine Ordinance Task Force  
DATE: June 3, 2013  
PAGE: 4  
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

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An exception to this rule applies when the attorney client communication comes within the ambit of Sections 67.21(i) or 67.24(b)(1) of the Ordinance.

**Attorney Work Product Doctrine**

Section 67.27 of the Sunshine Ordinance allows for "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, [or for] withholding on the basis that disclosure is prohibited by law, . . . [citing] the specific statutory authority." Gov't. Code Section 6254(k) exempts from disclosure "[r]ecords, the disclosure of which is *exempted* [ ] *pursuant to* [ ] *state law, including, but not limited to*, provisions of the Evidence Code relating to privilege." Section 6726.04 of the Public Records Act specifically provides that attorney work product documents are exempt from disclosure as public records. That section in turn refers to Code of Civil Procedure Section 2018.030, which defines attorney work product to mean "[a] writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories[.]"

California courts have applied the work product privilege to exempt records from disclosure in the context of public records requests. (See e.g., *County of Los Angeles v. Superior Court (Axelrad)* (2000) 82 Cal.App.4th 819, 833 [public agency may rely on the attorney work product privilege to decline to disclose a document].) The *Axelrad* court further held that the attorney work product privilege "is not limited to writings created by a lawyer in anticipation of a lawsuit. It applies as well to writings prepared by an attorney while acting in a nonlitigation capacity." (82 Cal.App.4th at p. 833.) Also, courts have expressly recognized that internal attorney memoranda, correspondence and notes fall squarely within the attorney work product privilege. (See e.g., *Hickman v. Taylor* (1947) 329 U.S. 495, 511; *Popelka, Allard, McCowan & Jones v. Superior Court* (1980) 107 Cal.App.3d 496, 500.)

**Privilege Logs**

Due to its close relevance to the issues in this Complaint, I quote at length from a California Supreme Court case interpreting the California Public Records Act ("CPRA"), and overturning a Court of Appeals ruling that had required a county to provide a log of individual records withheld from production under CPRA.

***Haynie v. Superior Court* (2001) 26 Cal.4th 1061.**

The Court of Appeal also ruled that, upon receiving Haynie's Demand for Public Records, the County was obligated to determine whether the records exist, "enumerate or describe the records so discovered, identify exemptions applying to any enumerated or described records, and disclose the remaining records." In this court, the County does not dispute its obligation to determine whether requested records exist and whether exemptions apply to those records nor does it deny its duty to disclose nonexempt records that it has found. The County objects only to the ruling of the Court of Appeal that it should have provided Haynie with an enumeration or description of all responsive records, regardless of whether those records were exempt from disclosure. [26 Cal.4th at 1072.]

## MEMORANDUM

TO: Sunshine Ordinance Task Force  
DATE: June 3, 2013  
PAGE: 5  
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

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[ . . . ]

Haynie suggests that such a requirement may be inferred from *section 6255, subdivision (a)*, which provides: "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." [ . . . ] When an agency, in compliance with *section 6255*, articulates one or more of these exemptions, it will necessarily reveal the general nature of the documents withheld. For example, an agency that invokes *subdivision (j) of section 6254* has revealed that the withheld documents are library circulation records. Here, the County's invocation of *section 6254(f)* revealed that the withheld documents were records of an investigation. What *section 6255* does not require, however, is for the agency to go further and *describe* each of the documents falling within the statutory exemption. The Legislature, which has carefully detailed the components of the agency's denial of a CPRA request, even to the point of requiring the agency to "set forth the names and titles or positions of each person responsible for the denial" (§ 6253, *subd. (d)*), is fully capable of requiring agencies to include a log of withheld documents. Given this detailed scheme, it would be inappropriate for us to enlarge the agency's burden under the guise of interpreting the statute. [26 Cal.4th at 1074.]

[ . . . ]

We have no doubt that an agency may elect to create such a list, with or without requiring reimbursement for its costs, but we find nothing in the act itself that mandates any action other than opening for inspection the records identified as coming within the scope of the request or providing copies thereof at the expense of the person requesting copies. Preparing an inventory of potentially responsive records is not mandated by the CPRA. [26 Cal.4th at 1075.]

**CONCLUSION**

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.



**MEMORANDUM**

TO: Sunshine Ordinance Task Force  
DATE: June 3, 2013  
PAGE: 6  
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

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**ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED****SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.**

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) 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 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.

**SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.**

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

[ ]

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

**SEC. 67.27. JUSTIFICATION OF WITHHOLDING.**

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 or 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

**MEMORANDUM**

TO: Sunshine Ordinance Task Force  
DATE: June 3, 2013  
PAGE: 7  
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

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the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

**CALIFORNIA PUBLIC RECORDS ACT**

**SECTION 6254. EXEMPTION OF PARTICULAR RECORDS**

Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

[ . . . ]

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

**SECTION 6276. RECORDS OR INFORMATION NOT REQUIRED TO BE DISCLOSED**

Records or information not required to be disclosed pursuant to subdivision (k) of Section 6254 may include, but shall not be limited to, records or information identified in statutes listed in this article.

**SECTION 6276.04. "AERONAUTICS ACT" TO "AVOCADO HANDLER TRANSACTION RECORDS"**

Attorney-client confidential communication, Section 6068, Business and Professions Code and Sections 952,954, 956, 956.5, 957, 958, 959, 960, 961, and 962, Evidence Code.

Attorney, work product, confidentiality of, Section 6202, Business and Professions Code.

Attorney work product, discovery, Chapter 4 (commencing with Section 2018.010), of Title 4, of Part 4 of the Code of Civil Procedure.

**SAN FRANCISCO SUNSHINE ORDINANCE COMPLAINT**

Date: November 19, 2012; amended December 18, 2012.

Complainant: Allen Grossman  
111 30<sup>th</sup> Avenue  
San Francisco, CA 94121  
Facsimile: (415) 831-3721  
Email: [grossman356@mac.com](mailto:grossman356@mac.com)

Complaint against: John St. Croix, Executive Director  
San Francisco Ethics Commission.

Persons contacted: John St. Croix, Executive Director  
San Francisco Ethics Commission;  
Mr. Steven Massey, Information Technology Officer San  
Francisco Ethics Commission.

Alleged violations: Failure to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Sections 67.21, subdivision (b), 67.27, subdivisions (a) and (b) and their required disclosure under Section 67.42, subdivision (b) (1) (i) and (iii).

Chronology/Documents:

October 3, 2012: Complainant sent the attached Records Request (Document #1) by Facsimile to Mr. St. Croix. The Records Request, stated in part:

"This is a request under the applicable provisions of California Public Records Act and the San Francisco Sunshine Ordinance ("Sunshine Ordinance") for copies of any and all public records, including those archived, in any form or media, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications, in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to:

"(1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the folk, ring Commission Notice:

Notice of Consideration of Proposed Regulations at the September 24, 2012  
Regular Meeting of the Ethics Commission

**SAN FRANCISCO SUNSHINE ORDINANCE COMPLAINT**

Date: November 19, 2012

Complainant: Allen Grossman  
111 30<sup>th</sup> Avenue  
San Francisco, CA 94121  
Facsimile: (415) 831-3721  
Email: grossman356@mac.com

Complaint against: John St. Croix, Executive Director  
San Francisco Ethics Commission.

Persons contacted: John St. Croix, Executive Director  
San Francisco Ethics Commission;  
Mr. Steven Massey, Information Technology Officer  
San Francisco Ethics Commission

Alleged violations: Failure to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Section 67.27, subdivisions (a) and (b) and their required disclosure under Section 67.42; subdivision (b) (1) (i) and (ii).

Chronology/Documents:

October 3, 2012: Complainant sent the attached Records Request (Document #1) by Facsimile to Mr. St. Croix. The Records Request, stated in part:

"This is a request under the applicable provisions of California Public Records Act and the San Francisco Sunshine Ordinance ("Sunshine Ordinance") for copies of any and all public records, including those archived, in any form or media, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications, in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to:

"(1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the following Commission Notice:

Notice of Consideration of Proposed Regulations at the September 24, 2012 Regular Meeting of the Ethics Commission

At its regular meeting on Monday, September 24, 2012, at 5:30 p.m. in Room 400, City Hall, the San Francisco Ethics Commission will discuss draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force (SOTF) and provided guidance to staff for the development of the proposed amendments.

"(2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney."

October 12, 2012: Mr. Massey responded, on behalf of Mr. St. Croix, by email (Document #2) stating, in part:

"We have reviewed our files to identify records that are responsive to your request. Due to the volume of documents, I am unable to attach the responsive documents to this e-mail. The documents may be provided electronically on a compact disc. If you would like the Commission to provide the disc, there is a \$1.00 fee. If you would like to provide your own disc so that the documents can be stored, there is no fee.

"A few of the documents have been redacted pursuant to California Government Code section 6254.21, in accordance with San Francisco Administrative Code section 67.26. The redacted documents are in a separate folder named "Redacted."

*"We are withholding other documents in their entirety, pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030." [Emphasts Added.]*

October 21, 2012: Complainant sent the attached letter (Document #3) by Facsimile to Mr. Massey in which Complainant advised him that:

"There is no point in my considering whether any of these "confidentiality" protections – the attorney-client privilege and/or either of the (two) attorney work product doctrine(s) – are properly applied because you state that those exemptions apply to "other" public records, none of which you classify, name or otherwise identify. Attempting to do that would be a useless exercise in that I would have to assume how many records are withheld, specifically what kind of public record each one is and then determine whether or not I concur that one or two of those "protections" would apply.

"By combining several exemptions so that more than one of those exemptions could be applicable to each one and/or all of the withheld records, Mr. St. Croix has taken a position that is not defensible. It is incumbent on him to describe, in some comprehensible way, each of those withheld public records he claims is subject to the

attorney-client privilege exemption and each of those he claims is subject to either the absolute work product doctrine or the conditional work product doctrine.

"The response failed to mention several applicable provisions of the San Francisco Sunshine Ordinance, the most important of which is §67.24(b)(1), to wit:

§67.24 Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

Subsection (b) (1) provides, in part:

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(ii). A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

"Until I receive and review the copies of the records that are being made available to me, I can not determine whether any of those that I would expect should be included are not and, thus, may fall within one or both of subdivisions (ii) and (iii) of §67.24(b)(1). However, to the extent that any of the withheld records do fall within either of these subdivisions, they are not exempt by these express provisions of the Sunshine Ordinance."

November 1, 2012: Complainant sent the following email Mr. Massey (copy to Mr. St. Croix):

To: Steven.Massey@SFGOV.ORG  
From: Allen Grossman <grossman356@mac.com>  
Date: 11/01/2012 04:29PM  
Cc: john.st.croix@sfgov.org  
Subject: October 3, 2012 Records Request

Mr. Massey,

It has been 10 days since I sent you the attached October 21, 2012 letter by Facsimile. Since the letter raises some questions regarding the basis on which Mr. St. Croix's refused to make the copies of some unidentified public records available, I do think it

appropriate that he or you, on his behalf, respond to the letter. Ignoring the letter is not an appropriate response.

Allen Grossman


November 2, 2012 Mr. St. Croix responded by email (Document #4) as follows:

From: john.st.croix@sfgov.org  
Subject: Re: October 3, 2012 Records Request  
Date: November 2, 2012 3:04:50 PM PDT  
To: Allen Grossman <grossman356@mac.com>  
Cc: Steven.Massey@SFGOV.ORG

Mr. Grossman - This response is regarding your communication below and the attached letter to Steven Massey from you dated October 21, 2012. *You have already received all documents responsive to your request. We are not required to create documents that do not exist. I consider this matter closed. [Emphasis Added.]*

John St. Croix  
Executive Director, San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102-6053

Hearing: Complainant requests a public hearing before the Sunshine Ordinance Task Force.

  
Allen Grossman

Allen Grossman  
111 30<sup>th</sup> Avenue  
San Francisco, CA 94121-1005  
Email: grossman356@mac.com  
Phone: (415) 831-3720  
FAX: (415) 831-3721

VIA FACSIMILE

To: Mr. John St. Croix, Executive Director  
San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA. 94102-6053

Date: October 3, 2012

This is a request under the applicable provisions of California Public Records Act and the San Francisco Sunshine Ordinance ("Sunshine Ordinance") for copies of any and all public records, including those archived, in any form or media, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications, in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to:

(1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the following Commission Notice:

Notice of Consideration of Proposed Regulations at the September 24, 2012 Regular Meeting of the Ethics Commission

At its regular meeting on Monday, September 24, 2012, at 5:30 p.m. in Room 400, City Hall, the San Francisco Ethics Commission will discuss draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force (SOTF) and provided guidance to staff for the development of the proposed amendments.

(2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney.

In accordance with Section 67.25(d) of the Sunshine Ordinance, please provide the copies of any and all responsive public records as soon as reasonably possible on an incremental or "rolling"

#1



basis.

If the requested records are kept electronically or in PDF format, please send them in their original format by email to my above email address. If the records are kept in some other format, please scan the relevant page(s) to PDF format and send them by email to my above email address.

This public records request is to be read broadly and any exemptions to disclosure of any public information in such public records are to be construed narrowly.



Allen Grossman

From: Steven.Massey@SFGOV.ORG  
Subject: Response to records request - October 3, 2012  
Date: October 12, 2012 2:57:40 PM PDT  
To: Allen Grossman <grossman356@mac.com>

Mr. Grossman,

On October 3, 2012, Executive Director St. Croix received the following request from you:

"...copies of any and all public records...in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to: (1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the following Commission Notice: Notice of Consideration of Proposed Regulations at the September 24, 2012 Regular Meeting of the Ethics Commission... (2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney."

You requested that the Ethics Commission send the records to your e-mail address.

We have reviewed our files to identify records that are responsive to your request. Due to the volume of documents, I am unable to attach the responsive documents to this e-mail. The documents may be provided electronically on a compact disc. If you would like the Commission to provide the disc, there is a \$1.00 fee. If you would like to provide your own disc so that the documents can be stored, there is no fee.

A few of the documents have been redacted pursuant to California Government Code section 6254.21, in accordance with San Francisco Administrative Code section 67.26. The redacted documents are in a separate folder named "Redacted."

We are withholding other documents in their entirety, pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030.

Please let me know whether you would like the Commission to provide the disc or whether you will provide your own. The responsive documents to your request are available for inspection and copying.

Sincerely,

Steven Massey

#2

Information Technology Officer  
CCSF Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102  
(P) 415-252-3108  
(F) 415-252-3112  
Steven.Massey@sfgov.org  
<http://www.sfethics.org>

Allen Grossman  
111 30<sup>th</sup> Avenue  
San Francisco, CA 94121-1005  
Tel: (415) 831-3720  
Fax: (415) 831-3721  
Email: grossman356@mac.com

October 21, 2012

BY FACSIMILE

Mr. Steven Massey  
Information Technology Officer  
CCSF Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

Re: October 3, 2012 Records Request

Dear Mr. Massey:

In your October 12, 2012 Email responding to the subject Records Request you advised me:

"We are withholding other documents in their entirety, pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030."

My Records Request was directed to Mr. St. Croix, Executive Director of the Ethics Commission. Although the complete response - that is, the copies of public records you are making available to me (including those with redactions) as described in your email and notice that the decision to withhold public records from disclosure - came from you, I can properly assume that Mr. St. Croix approved the response and that he takes full responsibility for it. If otherwise, please advise me.

So that we are looking at the specific sections of the state statutes to which you refer as the basis for withholding "other documents", I quote them in full on the Schedule attached to this letter. CPRA §6254(k) is not an exemption by itself, but incorporates state and federal law exemptions. Evidence Code §§952 and 954 create the "attorney-client privilege" and CCP §2018.30 creates two so-called "work product" doctrines, one absolute and the other conditional. Mr. St. Croix relies on these two exemptions to justify his withholding of certain unidentified public records. However, in the case of the conditional work product doctrine - §2018.30(b) - it is not clear whether it is even applicable when no litigation is involved.

There is no point in my considering whether any of these "confidentiality" protections - the attorney-client privilege and/or either of the (two) attorney work product doctrine(s) - are properly applied because you state that those exemptions apply to "other" public records, none of which you classify, name or otherwise identify. Attempting to do that would be a useless exercise in that I would have to assume how many records are withheld, specifically what kind of public record each

#3

one is and then determine whether or not I concur that one or two of those "protections" would apply.

By combining several exemptions so that more than one of those exemptions could be applicable to each one and/or all of the withheld records, Mr. St. Croix has taken a position that is not defensible. It is incumbent on him to describe, in some comprehensible way, each of those withheld public records he claims is subject to the attorney-client privilege exemption and each of those he claims is subject to either the absolute work product doctrine or the conditional work product doctrine.

The response failed to mention several applicable provisions of the San Francisco Sunshine Ordinance, the most important of which is §67.24(b)(1), to wit:

§67.24 Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

Subsection (b) (1) provides, in part:

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

Until I receive and review the copies of the records that are being made available to me, I can not determine whether any of those that I would expect should be included are not and, thus, may fall within one or both of subdivisions (ii) and (iii) of §67.24(b)(1). However, to the extent that any of the withheld records do fall within either of these subdivisions, they are not exempt by these express provisions of the Sunshine Ordinance.

§67.25 provides, in part:

"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..."

§67.27 provides, in part:

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. [Emphasis added.]

(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere. {Emphasis Added.}

(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.

Taken together these provisions require Mr. St. Croix, as the custodian of the requested records, to review each of the withheld records, provide some description of each (without necessarily disclosing any public information in it that he considers exempt) and then cite the specific statutory exemption that he claims exempts it or the redacted information from disclosure.

Before I pursue my Records Request any further, Mr. St. Croix is reminded that he cannot summarily deny my constitutionally protected right to access public records and public information with broad claims of exemptions to a group of varying types of public records contrary to what the CPRA and the Sunshine Ordinance were designed to prevent.

Very Truly Yours,

  
Allen Grossman

CPRA § 6254(k): Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following: (k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

Evidence Code §952: As used in this article, "confidential communication between client and lawyer" means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship.

Evidence Code §954: Subject to Section 912 and except as otherwise provided in this article, the client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer if the privilege is claimed by:

(a) The holder of the privilege;

(b) A person who is authorized to claim the privilege by the holder of the privilege; or

(c) The person who was the lawyer at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure.

...The word "persons" as used in this subdivision includes partnerships, corporations, limited liability companies, associations and other groups and entities.

Code of Civil Procedure §2018.030:

(a) A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.

(b) The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice.

MEMORANDUM

Date: May 28, 2013

To: Members, Sunshine Ordinance Task Force

Re: Complaint # 12056:  
Grossman vs. John St. Croix, Executive Director, SF Ethics Commission

My complaint and Mr. St. Croix's response are to be heard at SOTF's June 5, 2013 regular meeting. Currently the SOTF has nine members, two short of the statutorily required eleven. Under the SOTF current bylaws, the "affirmative vote of a majority of the members of the Task Force (six votes) shall be required for the approval of all substantive matters."

Determinations by the SOTF whether a respondent custodian agency, department or City officer responding to a complaint has or has not complied with the Sunshine Ordinance are "substantive matters" requiring approval by six votes irrespective of the number of SOTF members voting.

Following a hearing on the complaint, the SOTF's practice has been to consider a motion with respect to the complaint's claims of respondent's non-compliance with the Sunshine Ordinance. That motion requires the "aye" vote of at least six members that the respondent had not complied. Thus, when less than all eleven members are present and voting, the complainant needs more than a simple majority for such a motion to pass. If all nine current members attend the June 5 meeting and vote on my complaint, a two-thirds majority – six out of nine votes – will be required for a favorable determination. If only eight members attend and vote, the percentage rises to 75%; if only seven attend and vote, it is 87.5%. As a result, this combination of the six-vote rule and the formulation of the motion stack the deck against every complainant.

However, this combination is contrary to both the Sunshine Ordinance and the CPRA. *The Sunshine Ordinance and the CPRA both definitively provide that all public records are presumptively fully disclosable and the burden is on the custodian to prove, i.e., justify, the application of a specific exemption.*

Sunshine Ordinance:

§67.21(g): "In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies."

§67.27 JUSTIFICATION OF WITHHOLDING:

"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 or 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.”

CPRA:

§6255(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.”

Thus, the burden of proving, i.e., “justifying”, the refusal to disclose the public record is on the respondent, not on the complainant to disprove any claimed “justification”.

For that reason, the SOTF’s practice with respect to motions involving such non-compliance with the Sunshine Ordinance should be changed. The motion must be, in effect, that the respondent has justified the application of the claimed exemption or prohibition to the public record(s) requested, not that the complainant has proven that the records are not exempt from disclosure. If the motion is put in such terms, the six-vote rule will be consistent with applicable law, not contrary to it. It will also bring some fairness back into the process.

From: john.st.croix@sfgov.org  
 Subject: Re: October 3, 2012 Records Request  
 Date: November 2, 2012 3:04:50 PM PDT  
 To: Allen Grossman <grossman356@mac.com>  
 Cc: Steven.Massey@SFGOV.ORG

Mr. Grossman - This response is regarding your communication below and the attached letter to Steven Massey from you dated October 21, 2012. You have already received all documents responsive to your request. We are not required to create documents that do not exist. I consider this matter closed.

John St. Croix  
 Executive Director, San Francisco Ethics Commission  
 25 Van Ness Avenue, Suite 220  
 San Francisco, CA 94102-6053

-----Allen Grossman <grossman356@mac.com> wrote: -----  
 To: Steven.Massey@SFGOV.ORG  
 From: Allen Grossman <grossman356@mac.com>  
 Date: 11/01/2012 04:29PM  
 Cc: john.st.croix@sfgov.org  
 Subject: October 3, 2012 Records Request

Mr. Massey,

It has been 10 days since I sent you the attached October 21, 2012 letter by Facsimile. Since the letter raises some questions regarding the basis on which Mr. St. Croix's refused to make the copies of some unidentified public records available, I do think it appropriate that he or you, on his behalf, respond to the letter. Ignoring the letter is not an appropriate response.

Allen Grossman

[attachment "Ltr Massey 10-21-2012.pdf" removed by John St.Croix/  
 ETHICS/SFGOV]

#4

Allen Grossman  
111 30<sup>th</sup> Avenue  
San Francisco, CA 94121-1005  
Tel: (415) 831-3720  
Fax: (415) 831-3721  
Email: grossman356@mac.com

December 18, 2012

By Facsimile and Email

Ms. Andrea Ausberry, Administrator  
Sunshine Ordinance Task Force  
City Hall - Room 244  
1 Dr. Carlton B. Goodlett Place San  
Francisco, CA 94102-4689

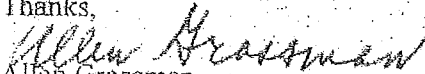
RE: Sunshine Complaint No. 12056

Dear Ms. Ausberry;

When reviewing my Complaint and my original records request I found I had to revise the "Alleged Violations" section to conform to my request. Since I wasn't sure how you would want it handled, I decided to send you a corrected first page of the Complaint with that changed section, which you can substitute for the first page. It is attached.

Please let me know if that is not how you want it handled. If acceptable, please send me a copy of yours to Mr. St. Croix and the other persons who received the original version.

Thanks,

  
Allen Grossman

ALLEN GROSSMAN  
111 30<sup>th</sup> AVENUE  
SAN FRANCISCO, CALIFORNIA 94121-1005  
TELEPHONE: (415) 831-3720  
FACSIMILE: (415) 831-3721  
Email: grossman356@mac.com

FACSIMILE TRANSMITTAL

To: Andrea S. Ausberry  
Administrator  
Sunshine Ordinance Task Force

FAX Number: (415) 554 -5163

Phone Number: (415) 554 -7724

Number of Pages: 3, including cover sheet

Date: December 18, 2012

From: Allen Grossman

Message: Letter + Amended Page 1 dated today re #12056.

**IF YOU DO NOT RECEIVE ALL PAGES OF THIS TRANSMISSION,  
PLEASE CALL (415) 831-3720 AS SOON AS POSSIBLE**

CONFIDENTIALITY NOTE: The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the receiver of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

TRANSMISSION VERIFICATION REPORT

TIME : 12/18/2012 09:03  
NAME : SFUFO/GROSSMAN  
FAX : 4158313721  
TEL : 4158313720  
SER.# : 60395977

DATE, TIME	12/18 09:02
FAX NO./NAME	5545163
DURATION	00:01:25
PAGE(S)	03
RESULT	OK
MODE	STANDARD

ALLEN GROSSMAN  
111 30<sup>th</sup> AVENUE  
SAN FRANCISCO, CALIFORNIA 94121-1005  
TELEPHONE: (415) 831-3720  
FACSIMILE: (415) 831-3721  
Email: grossman356@mac.com

*RESENDING*  
FACSIMILE TRANSMITTAL

To: Andrea S. Ausberry  
Administrator  
Sunshine Ordinance Task Force

FAX Number: (415) 554 -5163

Phone Number: (415) 554 -7724

Number of Pages: 14, including cover sheet

Date: November 19, 2012

From: Allen Grossman

Message: Complaint against John St. Croix,  
Executive Director, Ethics Commission

IF YOU DO NOT RECEIVE ALL PAGES OF THIS TRANSMISSION,  
PLEASE CALL (415) 831-3720 AS SOON AS POSSIBLE

CONFIDENTIALITY NOTE: The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the receiver of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

TRANSMISSION VERIFICATION REPORT

TIME : 11/19/2012 10:45  
NAME : SFUFG/GROSSMAN  
FAX : 4158313721  
TEL : 4158313720  
SER.# : G0J395977

DATE, TIME	11/19 10:38
FAX NO./NAME	5545163
DURATION	00:06:49
PAGE(S)	14
RESULT	OK
MODE	STANDARD



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

JAMIENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
COMMISSIONER

PAUL A. RENNE  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

## Via E-Mail

December 6, 2012.

Andrea Ausberry, Administrator  
Sunshine Ordinance Task Force  
City Hall – Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**RE: Sunshine Complaint No. 12056**

Dear Ms. Ausberry:

On November 29, 2012, the Ethics Commission received notice of Case No. 12056 (*Allen Grossman v John St. Croix, Executive Director, Ethics Commission*). In his complaint, Mr. Grossman alleged that Mr. St. Croix failed “to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Section 67.27, subdivisions (a) and (b) and their required disclosure under Section 67.42, subdivision (b)(1)(i) and (ii).”

### Background

On October 3, 2012, Mr. Grossman faxed a public records request to the Ethics Commission for the following:

“...copies of any and all public records...in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to: (1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the following Commission Notice: Notice of Consideration of Proposed Regulations at the September 24, 2012 Regular Meeting of the Ethics Commission...(2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney.”

Steven Massey responded to this request on October 12, 2012. He provided 127 documents electronically; six had been partially redacted. He also informed Mr. Grossman that the Commission was “withholding other documents in their entirety,



pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030.”

On October 21, 2012, Mr. Grossman faxed a letter to Mr. Massey. He stated that it was “incumbent on [Mr. St. Croix] to describe, in some comprehensible way, each of those withheld public records he claims is subject to the attorney-client privilege exemption and each of those he claims is subject to either the absolute work product doctrine or the conditional work product doctrine.” Mr. Grossman referenced Sunshine Ordinance sections 67.24(b)(ii) and (iii), which describe specific records that are subject to disclosure, notwithstanding any exemptions otherwise provided by law. Mr. Grossman noted that if any of the withheld records fall within either of the subsections, then the records “are not exempt by these express provisions of the Sunshine Ordinance.”

On November 1, 2012, Mr. Grossman sent an e-mail to Mr. Massey about his October 21, 2012 letter that “raises some questions regarding the basis on which Mr. St. Croix’s refused to make the copies of some unidentified public records available...Ignoring the letter is not an appropriate response.”

On November 2, 2012, I responded via e-mail. I informed Mr. Grossman that he had already received the documents responsive to his request and that the Commission is not required to create documents that do not exist.

On or about November 19, 2012, Mr. Grossman filed this complaint with the Sunshine Ordinance Task Force.

#### Applicable Law

##### SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.

Notwithstanding a department’s legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

...

##### (b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

- (i) A pre-litigation claim against the City;
- (ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;
- (iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

##### SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

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 or elsewhere.

...

#### Analysis

Mr. Grossman first alleges that I failed “to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Section 67.27, subdivisions (a) and (b).” Mr. Grossman has misinterpreted Sunshine Ordinance sections 67.27(a) and (b). There is no requirement in those subsections that a responding department must “demonstrat[e] that each such unidentified withheld record is exempt.” According to the *Good Government Guide: 2010-2011 Edition* (“GGG”), published by the Office of the City Attorney, the law does not require a responding department withholding records to create a privilege log identifying the withheld records. (See GGG, p. 86.)

Sunshine Ordinance section 67.27 requires that any withholding of information 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 or elsewhere...”

In its October 12, 2012 e-mail response to Mr. Grossman, staff provided the required justification of withholding of information, citing California Government Code section 6254(k); California Evidence Code sections 952 and 954; and California Code of Civil Procedure section 2018.030. This written justification was made in accordance with both Sunshine Ordinance section 67.27(a) and section 67.27(b). Mr. Grossman even italicized staff’s written justification on page 2 of his complaint. As the Ethics Commission is not required to create documents that do not exist, there were no additional documents for staff to provide that were responsive to his October 3, 2012 request. Therefore, I respectfully request that the Sunshine Ordinance Task Force find no violation, as staff has provided Mr. Grossman with a written justification of withholding of records in a timely manner, in accordance with Sunshine Ordinance section 67.27(a) and (b).

Secondly, Mr. Grossman also appears to allege that I failed to disclose documents that were required to be disclosed under “Section 67.42, subdivision (b)(1)(i) and (ii).” Section 67.42 of the Sunshine Ordinance does not exist. Therefore, I will respond to this allegation under the assumption that Mr. Grossman intended to reference section 67.24(b)(1)(i) and (ii).

In his October 21, 2012 letter (which Mr. Grossman attached as “Document #3” to his complaint), Mr. Grossman stated that the October 12, 2012 “response failed to mention several applicable provisions of the San Francisco Sunshine Ordinance, the most important of which is §67.24(b)(1)...” It is unclear what law requires that staff mention this particular provision of the

Sunshine Ordinance in its response to his October 3, 2012 records request. Sunshine Ordinance section 67.24(b)(1) identifies public information that must be disclosed. There is no requirement that a responding party specifically mention it in its response to a public records request.

In responding to all public record requests, staff thoroughly reviews the Commission's files to ensure that we identify all records that are responsive to the request. This review includes a review for any documents subject to disclosure under Sunshine Ordinance subsections 67.24(b)(1)(i) and (ii). Mr. Grossman appears to have made an assumption that documents subject to disclosure under these subsections were withheld. That is not the case.

Mr. Grossman received all responsive documents to his request that were subject to disclosure. He received these documents in the format requested and in a timely manner.

Therefore, as Mr. Grossman received all documents subject to disclosure and as staff justified the withholding of information in its October 12, 2012 e-mail response in accordance with Sunshine Ordinance 67.27, I respectfully request that the Sunshine Ordinance Task Force dismiss this matter.

Sincerely,

*/s/ John St. Croix*

John St. Croix  
Executive Director

Cc (e-mail): Allen Grossman, Complainant

**Ausberry, Andrea**

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**From:** Allen GROSSMAN [grossman356@me.com]  
**Sent:** Monday, March 18, 2013 4:02 PM  
**To:** sunshinechairgrant@gmail.com  
**Cc:** SOTF; St.Croix, John  
**Subject:** SOTF Complaint #12056

Dear Chair Grant,

This complaint was refiled on November 29, 2012. At that time, I expected it would be heard with a month or two as had been the SOTF's prior practice with the other complaints I filed over a period of four or five years. The SOTF's practice had been to observe the requirements of Section 67.21(e) of the Sunshine Ordinance that requires the SOTF to inform the complainant of its determination "no later than 45 days" from when the petition (complaint) is received. That section is quoted below.

On February 25, I sent the SOTF Administrator an email requesting that my complaint #12056 be put on the March 6, 2013 agenda -- some 98 days after the second filing. I asked that she take that up with you. As you know, my complaint was not put on the agenda.

In any case, my wife and I are leaving for a long planned five week vacation on April 3, the date of your next regularly scheduled meeting. It does not appear there will be a special SOTF meeting before then. We will still be away on May 1, as well, when the following regular meeting is scheduled. That means that the hearing on my complaint will have to wait until the June SOTF meeting, unless a May Special Meeting is called after May 9th.

For that reason, I would appreciate your setting the hearing of my complaint for the June meeting, assuming Mr. St. Croix is available.

Thank You,

Allen Grossman

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public.



**SUNSHINE ORDINANCE TASK FORCE**  
**Compliance and Amendments Committee**  
**CITY AND COUNTY OF SAN FRANCISCO**  
**DRAFT MINUTES**

**Hearing Room 408**  
**City Hall, 1 Dr. Carlton B. Goodlett Place**  
**San Francisco, CA 94102-4689**

**August 20, 2013 – 4:00 P.M.**

**Regular Meeting**

**Members:** Allyson Washburn (Chair),  
Richard Knee, Kitt Grant

**1. Call to order, roll call, and agenda changes.**

The meeting was called to order at 4:00 p.m. Member Grant was noted absent. There was a quorum.

Member Knee, seconded by Member Washburn, moved to EXCUSE Member Grant.

Speakers: None.

There were no speakers. **The motion PASSED without objection.**

**2. Adoption of July 16, 2013, Regular Meeting Minutes.**

**Member Knee, seconded by Member Washburn, moved to ADOPT the July 16, 2013 minutes as corrected.**

Speakers: None.

**The motion PASSED by the following vote:**

Ayes: 2 – Knee, Washburn

Excused: 1 – Grant

**3. File No. 12056:** Hearing on the status of the Order of Determination of Allen Grossman against John St. Croix, Executive Director, Ethics Commission for allegedly failing to justify withholding unidentified public records as exempt under provisions of the Sunshine Ordinance.

Allen Grossman (Complainant) stated the Ethics Commission has not released the records he originally requested, failing to comply with the Order of Determination. The Complainant responded to questions raised throughout the discussion. There were no speakers in support of the Complainant. Garrett Chatfield, Ethics Commission (Respondent) stated the records the Complainant requested are exempt from disclosure and is the reason the records have been withheld. There were no speakers in support of the Respondent. A question and answer period followed. Respondent waived rebuttal. Complainant provided a rebuttal.

**Member Knee, seconded by Member Washburn, moved to refer the matter back to the Task Force with a recommendation of referral to Ethics Commission and the Board of Supervisors for John St. Croix, Executive Director, Ethics Commission failure to comply with the Order of Determination.**

Speakers: None.

**The motion PASSED by the following vote:**

Ayes: 2 – Knee, Washburn

Excused: 1 – Grant

4. **File No. 12059:** Hearing on the status of the Order of Determination of Supreet Pabla, SEIU Local 1022 against Human Services Agency for allegedly failing to provide records requested relevant to the representation of the bargaining unit's employees.

Supreet Pabla (Complainant) stated the Human Services Agency has partially complied with the Order of Determination. The Complainant responded to questions raised throughout the discussion. Dan Phillips, spoke in support of the Complainant. Luanne Kim, Human Services Agency (Respondent) stated the records the Complainant requested do not exist, for example the Human Services Agency does not keep records of its parking facilities by union occupancy. There were no speakers in support of the Respondent. A question and answer period followed. Respondent waived rebuttal. Complainant provided a rebuttal.

**Member Knee, seconded by Member Washburn, moved to refer the matter back to the Task Force with a recommendation of referral to Ethics Commission for the Human Services Agency's failure to comply with the Order of Determination.**

Speakers: None.

**The motion PASSED by the following vote:**

Ayes: 2 – Knee, Washburn

Excused: 1 – Grant

5. **Public Comment.**

Speakers: None.

6. **Administrator's Report.**

The Administrator presented the report.

Speakers: None.

7. **Announcements, Comments, Questions, and Future Agenda Items.**

Member Knee announced he would not be in attendance for the September Compliance and Amendments Committee meeting.

8. **ADJOURNMENT**

**Member Knee, seconded by Member Washburn, moved to ADJOURN.**

There were no speakers. **The motion PASSED without objection.**

There being no further business, the Compliance and Amendments Committee adjourned at the hour of 4:51 p.m.

**Agenda Item Information**

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**Public Comment**

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Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations.

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the hearing begins, written comments regarding the subject of the meeting or hearing. These comments will be made a part of the official public record.

**Hearing Procedures**

- |    |  |                      |
|----|--|----------------------|
| 1. | Complainant presents his/her facts and evidence  | 5 minutes            |
|    | Other parties of Complainant present facts and evidence  | Up to 3 minutes each |
| 2. | City responds  | 5 minutes            |
|    | Other parties of City respond  | Up to 3 minutes each |
|    | <i>Above total speaking times for Complainant and City to be the same.</i>                                   |                      |
| 3. | Matter is with the Task Force for discussion and questions.  |                      |
| 4. | Respondent and Complainant presents clarification/rebuttal   | 3 minutes            |
| 5. | Matter is with the Task Force for motion and deliberation.   |                      |
| 6. | Public comment (Excluding Complainant & City response, witnesses)  | Up to 3 minutes each |
| 7. | Vote by Task Force (Public comment at discretion of chair on new motion and/or on new motion if vote fails.) |                      |

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

**Disability Access**

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71L. For more information about MUNI accessible services, call (415) 701-4485. There is accessible parking in the vicinity of City Hall at Civic Center Plaza and adjacent to Davies Hall and the War Memorial Complex. Accessible curbside parking is available on Dr. Carlton B. Goodlett Place and Grove Street.

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### **Know Your Rights Under the Sunshine Ordinance**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102; phone (415) 554-7724; fax (415) 554-7854; or email [sotf@sfgov.org](mailto:sotf@sfgov.org).

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### **Cell Phones, Pagers and Similar Sound-Producing Electronic Devices**

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### **Lobbyist Registration and Reporting Requirements**

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code §2.100, et. seq] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at: 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 581-3100; fax (415) 252-3112; web site [www.sfgov.org/ethics](http://www.sfgov.org/ethics).



**SUNSHINE ORDINANCE TASK FORCE  
CITY AND COUNTY OF SAN FRANCISCO  
AGENDA**

**Hearing Room 408  
City Hall, 1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689**

**September 4, 2013 – 4:00 PM**

**Regular Meeting**

**1. CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES**

Seat 1	<i>(Vacant)</i>	Seat 8	Todd David
Seat 2	Richard Knee <i>(Hold Over)</i>	Seat 9	Chris Hyland
Seat 3	Kitt Grant – <b>Chair</b>	Seat 10	Louise Fischer – <b>Vice Chair</b>
Seat 4	<i>(Vacant)</i>	Seat 11	Bruce Oka <i>(Hold Over)</i>
Seat 5	Allyson Washburn <i>(Hold Over)</i>		
Seat 6	David Pilpel	Ex-officio	Angela Calvillo
Seat 7	David Sims	Ex-officio	<i>(Vacant)</i>

2. **Election of Chair and Vice Chair - Election of Officers; per Article II, Section 3 of the By-Laws:** “The Officers shall be elected at the first regular meeting of the Task Force held on or before July 1 of each year, or at a subsequent meeting, the date of which shall be fixed by the Task Force at the first regular meeting on or after July 1 of each year. If any Task Force office becomes vacant, that office shall be filled at the first meeting after the vacancy occurs.” *(approximately 15 minutes)* (Discussion and Action)
3. **File No. 12056:** The Compliance and Amendments Committee has referred File No. 12056, Allen Grossman against John St. Croix, Executive Director, Ethics Commission for allegedly failing to justify withholding unidentified public records as exempt under provisions of the Sunshine Ordinance. *(approximately 30 minutes)* (Discussion and Possible action) (attachment)
4. **Public Comment:** Members of the public may address the Sunshine Ordinance Task Force (SOTF) on matters that are within SOTF’s jurisdiction, but not on today’s agenda. (No Action) **Public comment shall be taken at 5:00 pm or as soon thereafter as possible.**
5. **File No. 12058:** The Compliance and Amendments Committee has referred File No. 12058, Dominic Maionchi against Recreation and Park for allegedly failing to provide records requested pertaining to berthing contracts between the City and County of San Francisco and slip holders. *(approximately 30 minutes)* (Discussion and Possible action) (attachment)

6. **File No. 12059:** The Compliance and Amendments Committee has referred File No. 12059, Supreet Pabla, SEIU Local 1022 against Human Services Agency for allegedly failing to provide records requested relevant to the representation of the bargaining unit's employees. *(approximately 30 minutes) (Discussion and Possible action) (attachment)*
7. **File No. 13012:** Complaint filed by Michael Fondanova, representing Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge. *(attachment)*
  - (a) Determination of jurisdiction on complaint filed by Michael Fondanova, representing Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge. *(approximately 5 minutes) (Discussion and Action)*
  - (b) Hearing on complaint filed by Michael Fondanova, representing Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge. *(approximately 45 minutes) (Discussion and Action)*
8. **File No. 13017:** Complaint filed by William Clark against the Office of the City Attorney for allegedly failing to provide a response to a records request regarding communications between the Arts Commission and Office of the City Attorney concerning time billing for FY 2010-2011. *(attachment)*
  - (a) Determination of jurisdiction on complaint filed by William Clark against the Office of the City Attorney for allegedly failing to provide a response to a records request regarding communications between the Arts Commission and Office of the City Attorney concerning time billing for FY 2010-2011. *(approximately 5 minutes) (Discussion and Action)*
  - (b) Hearing on complaint filed by William Clark against the Office of the City Attorney for allegedly failing to provide a response to a records request regarding communications between the Arts Commission and Office of the City Attorney concerning time billing for FY 2010-2011. *(approximately 45 minutes) (Discussion and Action)*
9. **File No. 13019:** Complaint filed by Michael Petrelis against the Office of the District Attorney for allegedly violating Sunshine Ordinance section 67.29-6; failing to disclose statements regarding financial interest with the City from donors. *(attachment)*
  - (a) Determination of jurisdiction on complaint filed by Michael Petrelis against the Office of the District Attorney for allegedly violating Sunshine Ordinance section 67.29-6; failing to disclose statements regarding financial interest with the City from donors. *(approximately 5 minutes) (Discussion and Action)*

- (b) Hearing on complaint filed by Michael Petrelis against the Office of the District Attorney for allegedly violating Sunshine Ordinance §67.29-6; failing to disclose statements regarding financial interest with the City from donors. *(approximately 45 minutes) (Discussion and Action)*
  
- 10. **Approval of Minutes from the March 6, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
  
- 11. **Approval of Minutes from the April 3, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
  
- 12. **Approval of Minutes from the May 1, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
  
- 13. **Approval of Minutes from the June 5, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
  
- 14. **Approval of Minutes from the July 9, 2013 Special Meeting.** *(approximately 5 minutes) (Action) (attachment)*
  
- 15. **Approval of Minutes from the August 7, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
  
- 16. **Report: Compliance and Amendments Committee meeting of August 20, 2013.** *(approximately 5 minutes) (Discussion) (attachment)*
  
- 17. **Administrator's Report.** *(approximately 5 minutes) (Discussion)*
  
- 18. **Announcements, Comments, Questions, and Future Agenda Items.** *(approximately 10 minutes) (Discussion and Action)*
  
- 19. **ADJOURNMENT**

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- |    |  |                      |
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The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices (Chapter 67A of the San Francisco Administrative Code).

### **Lobbyist Registration and Reporting Requirements**

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code §2.100, et. seq] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at: 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 581-3100; fax (415) 252-3112; web site [www.sfgov.org/ethics](http://www.sfgov.org/ethics)

File No. 12056

SOTF Item No. 3

CAC Item No. \_\_\_\_\_

**SUNSHINE ORDINANCE TASK FORCE**  
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force (SOTF)

Date: September 4, 2013

Compliance and Amendments Committee (CAC)

Date: \_\_\_\_\_

**CAC/SOTF**

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| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Order of Determination             |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Complaint and Supporting documents |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Respondent's Response              |
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Completed by: Andrea Ausberry Date August 29, 2013

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

\*An asterisked item represents the cover sheet to a document that exceeds 75 pages.  
The complete document is in the file.



**ORDER OF DETERMINATION**

June 24, 2013

**DATE THE DECISION ISSUED**

June 5, 2013

*ALLEN GROSSMAN VS. JOHN ST. CROIX, ETHICS COMMISSION (CASE NO. 12056)*

**FACTS OF THE CASE**

Allen Grossman ("Complainant") alleges that John St. Croix, in his role as Executive Director of the Ethics Commission ("CAO"), violated public records laws by failing to fully respond to his public records request dated October 3, 2012.

**COMPLAINT FILED**

On November 19, 2012, Complainant filed this complaint against St. Croix, alleging violations of the public records laws, including specifically Sunshine Ordinance ("Ordinance") Sections 67.21(b), 67.27(a) & (b), and 67.24(b)(1)(i) & (iii).

**HEARING ON THE COMPLAINT**

On June 5, 2013, Complainant Allen Grossman appeared before the Task Force and presented his claim. Respondent, John St. Croix, Executive Director, Ethics Commission, presented the Ethics Commission's defense.

The issue in the case is whether the Respondent violated Sections 67.21, 67.24, and 67.27 of the Ordinance and/or Sections 6253 and 6254 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 Mr. Grossman to be persuasive and finds Sections 67.21(b) and 67.24(b)(1) of the Ordinance to be applicable in this case. The Task Force does not find the testimony provided by John St. Croix, Executive Director, Ethics Commission, persuasive to this case.

**DECISION AND ORDER OF DETERMINATION**

The Task Force finds that the records requested from the Ethics Commission are disclosable public records and finds that Respondent has violated Section 67.21(b) of the Sunshine Ordinance for failure to provide the records within ten days following receipt of a request and Section 67.24(b)(1) of the Sunshine Ordinance for withholding records subject to disclosure. John St. Croix, Executive Director, Ethics Commission, shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on August 20, 2013.



This Order of Determination was adopted by the Sunshine Ordinance Task Force on June 5, 2013, by the following vote:

(Washburn/Knee) (Violation 67.21(b))

Ayes: Knee, Washburn, Sims, Hyland, Oka, Fischer

Noes: Pilpel, David

Absent: Grant

(Fischer/David) (Violation 67.24(b)(1))

Ayes: Knee, Washburn, Sims, Hyland, Oka, Fischer

Noes: Pilpel, David

Absent: Grant



Kitt Grant, Chair  
Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney  
Allen Grossman, Complaint  
John St. Croix, Executive Director Respondent



DENNIS J. HERRERA  
City Attorney

JERRY THREET  
Deputy City Attorney

Direct Dial: (415) 554-3914  
Email: jerry.threet@sfgov.org

## MEMORANDUM

TO: Sunshine Ordinance Task Force  
FROM: Jerry Threet  
Deputy City Attorney  
DATE: June 3, 2013  
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

---

### COMPLAINT

Allen Grossman ("Complainant") alleges that John St. Croix, in his role as Executive Director of the Ethics Commission ("CAO"), violated public records laws by failing to fully respond to his public records request dated October 3, 2012.

### COMPLAINANT FILES COMPLAINT:

On November 19, 2012, Complainant filed this complaint against St. Croix, alleging violations of the public records laws, including specifically Sunshine Ordinance ("Ordinance") Sections 67.21(b), 67.27(a) & (b), and 67.24(b)(1)(i) & (iii).

### JURISDICTION

The Ethics Commission ("Ethics") is a City department, and therefore the Task Force generally has jurisdiction to hear a public records complaint against it and its staff. Ethics does not contest jurisdiction.

### APPLICABLE STATUTORY SECTION(S)

#### Section 67 of the San Francisco Administrative Code:

- Section 67.21 governs the process for gaining access to public records.
- Section 67.24 governs categories of required disclosure that may exceed those of CPRA.
- Section 67.27 governs written justifications for withholding of records.

#### Section 6250 et seq. of Cal. Gov't Code (PRA)

- Section 6253 governs time limits for responding to public records requests.
- Section 6254 governs exemptions from disclosure.

### BACKGROUND

Complainant sent a records request to St. Croix on October 3, 2012, requesting records related to Ethics' draft amendments to its regulations governing the handling of complaints related to violations of the Sunshine Ordinance (see Complaint for a more exact and detailed description of the request).

On October 12, 2012, Steven Massey responded on behalf of Ethics and St. Croix by email. The email explained that voluminous responsive documents would be provided on a compact disk, as it was not possible to send such volume via email. Massey's email also

## MEMORANDUM

TO: Sunshine Ordinance Task Force  
DATE: June 3, 2013  
PAGE: 2  
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

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explained that Ethics had redacted some information on some documents “pursuant to California Government Code Section 6254.21, in accordance with [ ] Administrative Code Section 67.26”, which were placed in a separate folder on the disk marked “redacted”. The email further explained that some documents were withheld “in their entirety pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030.” (These are state statutes providing for the attorney work product privileges and the attorney-client privileges.)

Complainant responded via facsimile letter on October 21, 2012. Complainant’s letter mainly asserts that Massey’s invocation of the attorney work product and attorney client privileges to justify withholding an unknown number of otherwise undescribed documents, was not a proper response to his records request. The letter goes on to state that a proper response “must describe, in some comprehensible way, each of those withheld public records he claims is subject to the [asserted privilege].” The letter also asserts that any records that fall within Section 67.24(b)(1) of the Ordinance are not exempt from disclosure, even if they otherwise might constitute attorney-client or attorney work product privileged material. (Section 67.24(b)(1)(iii) covers mainly attorney-client communications related to the state and local public records laws.) The letter requested a response to these points.

On November 1, 2012, Complainant again requested a supplemental response from Ethics.

On November 2, 2012, Mr. St. Croix responded on behalf of Ethics, stating, “You have already received all documents responsive to your request. We are not required to create documents that do not exist. I consider this matter closed.”

On November 19, 2012, Complainant filed this complaint, setting out the above allegations.

On December 6, 2012, Mr. St. Croix responded on behalf of Ethics to the Complaint. The letter states that Ethics provided 127 documents to Complainant in response to his request, 6 of which has been partially redacted. The letter also argues that, in contrast to Complainant’s position, there “is no requirement in [Sunshine Ordinance sections 67.27(a) and (b)] that a responding department must ‘demonstrat[e] that each such unidentified withheld record is exempt.’” The letter states that Ethics’ response to the records request provided written justification for withholding public information by citing to specific statutes, as required by the Ordinance. The letter further states that Ethics withheld no documents that would be subject to the provisions of Section 67.24(b)(1) of the Ordinance. The letter concludes that Complainant received all documents that were subject to disclosure in a timely manner and in accordance with the requirements of law.

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

- What public records or information, if any, does Complainant allege is in the custody of Ethics that should have been provided but has not been provided?
- How many records were withheld in their entirety by Ethics? What was the nature of these documents?

## MEMORANDUM

TO: Sunshine Ordinance Task Force  
DATE: June 3, 2013  
PAGE: 3  
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

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**LEGAL ISSUES/LEGAL DETERMINATIONS:**

- Did Ethics timely respond to the request?
- Did Ethics fail to provide discloseable public records or information within its custody?
- Is Ethics required to provide Complainant a “privilege log” for records that are withheld?

**SUGGESTED ANALYSIS****Attorney-Client Privilege**

Section 67.27 of the Sunshine Ordinance allows for "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, [or for] withholding on the basis that disclosure is prohibited by law, . . . [citing] the specific statutory authority." Records that contain attorney-client privileged information are protected from disclosure as a public record under Government Code §§ 6254(k) and 6276.04, and Evid. C. § 954. Gov't. Code § 6254(k) exempts from disclosure "[r]ecords, the disclosure of which is exempted or prohibited pursuant to [ ] state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Gov't. Code § 6276.04 includes among its specifically enumerated state laws exempting records from disclosure: "Attorney-client confidential communication, Section 6068, Business and Professions Code and Sections 952, 954, 956, 956.5, 957, 958, 959, 960, 961, and 962, Evidence Code."

It is clear from these provisions that attorney-client privileged information is generally protected from disclosure under both the Public Records Act and the Sunshine Ordinance. In *Roberts v. City of Palmdale* (1993) 5 Cal.4<sup>th</sup> 363, the California Supreme Court held that the privilege protects from disclosure confidential communications between a city attorney and its municipal client even when not provided in connection to litigation. *City of Palmdale, supra*, 5 Cal.4<sup>th</sup> at 371. In discussing its holding, the court stated:

Open government is a constructive value in our democratic society. [ ] The attorney-client privilege, however, also has a strong basis in public policy and the administration of justice. The attorney-client privilege has a venerable pedigree that can be traced back 400 years. "[T]he privilege seeks to insure the 'right of every person to freely and fully confer and confide in one having knowledge of the law, and skilled in its practice, in order that the former may have adequate advice[.]'"

A city [department] needs freedom to confer with its lawyers confidentially in order to obtain adequate advice, just as does a private citizen who seeks legal counsel [ ]. The public interest is served by the privilege because it permits local government agencies to seek advice that may prevent the agency from becoming embroiled in litigation, and it may permit the agency to avoid unnecessary conflict with various members of the public.

*City of Palmdale, supra*, 5 Cal.4<sup>th</sup> at 380-381.

## MEMORANDUM

TO: Sunshine Ordinance Task Force  
DATE: June 3, 2013  
PAGE: 4  
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

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An exception to this rule applies when the attorney client communication comes within the ambit of Sections 67.21(i) or 67.24(b)(1) of the Ordinance.

**Attorney Work Product Doctrine**

Section 67.27 of the Sunshine Ordinance allows for "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, [or for] withholding on the basis that disclosure is prohibited by law, . . . [citing] the specific statutory authority." Gov't. Code Section 6254(k) exempts from disclosure "[r]ecords, the disclosure of which is *exempted* [ ] *pursuant to* [ ] *state law, including, but not limited to*, provisions of the Evidence Code relating to privilege." Section 6726.04 of the Public Records Act specifically provides that attorney work product documents are exempt from disclosure as public records. That section in turn refers to Code of Civil Procedure Section 2018.030, which defines attorney work product to mean "[a] writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories[.]"

California courts have applied the work product privilege to exempt records from disclosure in the context of public records requests. (See e.g., *County of Los Angeles v. Superior Court (Axelrad)* (2000) 82 Cal.App.4th 819, 833 [public agency may rely on the attorney work product privilege to decline to disclose a document].) The *Axelrad* court further held that the attorney work product privilege "is not limited to writings created by a lawyer in anticipation of a lawsuit. It applies as well to writings prepared by an attorney while acting in a nonlitigation capacity." (82 Cal.App.4th at p. 833.) Also, courts have expressly recognized that internal attorney memoranda, correspondence and notes fall squarely within the attorney work product privilege. (See e.g., *Hickman v. Taylor* (1947) 329 U.S. 495, 511; *Popelka, Allard, McCowan & Jones v. Superior Court* (1980) 107 Cal.App.3d 496, 500.)

**Privilege Logs**

Due to its close relevance to the issues in this Complaint, I quote at length from a California Supreme Court case interpreting the California Public Records Act ("CPRA"), and overturning a Court of Appeals ruling that had required a county to provide a log of individual records withheld from production under CPRA.

***Haynie v. Superior Court* (2001) 26 Cal.4th 1061.**

The Court of Appeal also ruled that, upon receiving Haynie's Demand for Public Records, the County was obligated to determine whether the records exist, "enumerate or describe the records so discovered, identify exemptions applying to any enumerated or described records, and disclose the remaining records." In this court, the County does not dispute its obligation to determine whether requested records exist and whether exemptions apply to those records nor does it deny its duty to disclose nonexempt records that it has found. The County objects only to the ruling of the Court of Appeal that it should have provided Haynie with an enumeration or description of all responsive records, regardless of whether those records were exempt from disclosure. [26 Cal.4th at 1072.]

## MEMORANDUM

TO: Sunshine Ordinance Task Force  
DATE: June 3, 2013  
PAGE: 5  
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

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[...]

Haynie suggests that such a requirement may be inferred from *section 6255, subdivision (a)*, which provides: "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." [...] When an agency, in compliance with *section 6255*, articulates one or more of these exemptions, it will necessarily reveal the general nature of the documents withheld. For example, an agency that invokes *subdivision (j) of section 6254* has revealed that the withheld documents are library circulation records. Here, the County's invocation of *section 6254(f)* revealed that the withheld documents were records of an investigation. What *section 6255* does not require, however, is for the agency to go further and describe each of the documents falling within the statutory exemption. The Legislature, which has carefully detailed the components of the agency's denial of a CPRA request, even to the point of requiring the agency to "set forth the names and titles or positions of each person responsible for the denial" (§ 6253, *subd. (d)*), is fully capable of requiring agencies to include a log of withheld documents. Given this detailed scheme, it would be inappropriate for us to enlarge the agency's burden under the guise of interpreting the statute. [26 Cal.4th at 1074.]

[...]

We have no doubt that an agency may elect to create such a list, with or without requiring reimbursement for its costs, but we find nothing in the act itself that mandates any action other than opening for inspection the records identified as coming within the scope of the request or providing copies thereof at the expense of the person requesting copies. Preparing an inventory of potentially responsive records is not mandated by the CPRA. [26 Cal.4th at 1075.]

**CONCLUSION**

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

## MEMORANDUM

TO: Sunshine Ordinance Task Force  
DATE: June 3, 2013  
PAGE: 6  
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

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**ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED****SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.**

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) 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 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.

**SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.**

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

[ ]

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

**SEC. 67.27. JUSTIFICATION OF WITHHOLDING.**

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 or 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

**MEMORANDUM**

TO: Sunshine Ordinance Task Force  
DATE: June 3, 2013  
PAGE: 7  
RE: Complaint No. 12056 – Grossman v. John St. Croix (Ethics Commission)

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the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

**CALIFORNIA PUBLIC RECORDS ACT**

**SECTION 6254. EXEMPTION OF PARTICULAR RECORDS**

Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

[ . . . ]

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

**SECTION 6276. RECORDS OR INFORMATION NOT REQUIRED TO BE DISCLOSED**

Records or information not required to be disclosed pursuant to subdivision (k) of Section 6254 may include, but shall not be limited to, records or information identified in statutes listed in this article.

**SECTION 6276.04. "AERONAUTICS ACT" TO "AVOCADO HANDLER TRANSACTION RECORDS"**

Attorney-client confidential communication, Section 6068, Business and Professions Code and Sections 952, 954, 956, 956.5, 957, 958, 959, 960, 961, and 962, Evidence Code.  
Attorney work product, confidentiality of, Section 6202, Business and Professions Code.  
Attorney work product, discovery, Chapter 4 (commencing with Section 2018.010), of Title 4, of Part 4 of the Code of Civil Procedure.



**SAN FRANCISCO SUNSHINE ORDINANCE COMPLAINT**

Date: November 19, 2012; amended December 18, 2012.

Complainant: Allen Grossman  
111 30<sup>th</sup> Avenue  
San Francisco, CA 94121  
Facsimile: (415) 831-3721  
Email: [grossman356@mac.com](mailto:grossman356@mac.com)

Complaint against: John St. Croix, Executive Director  
San Francisco Ethics Commission.

Persons contacted: John St. Croix, Executive Director  
San Francisco Ethics Commission;  
Mr. Steven Massey, Information Technology Officer San  
Francisco Ethics Commission

Alleged violations: Failure to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Sections 67.21, subdivision (b), 67.27, subdivisions (a) and (b) and their required disclosure under Section 67.42, subdivision (b) (1) (i) and (ii).

Chronology/Documents:

October 3, 2012: Complainant sent the attached Records Request (Document #1) by Facsimile to Mr. St. Croix. The Records Request, stated in part:

"This is a request under the applicable provisions of California Public Records Act and the San Francisco Sunshine Ordinance ("Sunshine Ordinance") for copies of any and all public records, including those archived, in any form or media, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications, in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to:

"(1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the folk, ring Commission Notice:

Notice of Consideration of Proposed Regulations at the September 24, 2012  
Regular Meeting of the Ethics Commission

**SAN FRANCISCO SUNSHINE ORDINANCE COMPLAINT**

Date: November 19, 2012

Complainant: Allen Grossman  
111 30<sup>th</sup> Avenue  
San Francisco, CA 94121  
Facsimile: (415) 831-3721  
Email: grossman356@mac.com

Complaint against: John St. Croix, Executive Director  
San Francisco Ethics Commission.

Persons contacted: John St. Croix, Executive Director  
San Francisco Ethics Commission;  
Mr. Steven Massey, Information Technology Officer  
San Francisco Ethics Commission

Alleged violations: Failure to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Section 67.27, subdivisions (a) and (b) and their required disclosure under Section 67.42; subdivision (b) (1) (i) and (ii).

Chronology/Documents:

October 3, 2012: Complainant sent the attached Records Request (Document #1) by Facsimile to Mr. St. Croix. The Records Request, stated in part:

“This is a request under the applicable provisions of California Public Records Act and the San Francisco Sunshine Ordinance (“Sunshine Ordinance”) for copies of any and all public records, including those archived, in any form or media, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications, in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to:

“(1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission’s regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force (“Draft Amendments”) and (b) the September 14, 2012 staff report (“Staff Report”) referred to in the following Commission Notice:

Notice of Consideration of Proposed Regulations at the September 24, 2012 Regular Meeting of the Ethics Commission

At its regular meeting on Monday, September 24, 2012, at 5:30 p.m. in Room 400, City Hall, the San Francisco Ethics Commission will discuss draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force (SOTF) and provided guidance to staff for the development of the proposed amendments.

"(2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney."

October 12, 2012: Mr. Massey responded, on behalf of Mr. St. Croix, by email (Document #2) stating, in part:

"We have reviewed our files to identify records that are responsive to your request. Due to the volume of documents, I am unable to attach the responsive documents to this e-mail. The documents may be provided electronically on a compact disc. If you would like the Commission to provide the disc, there is a \$1.00 fee. If you would like to provide your own disc so that the documents can be stored, there is no fee.

"A few of the documents have been redacted pursuant to California Government Code section 6254.21, in accordance with San Francisco Administrative Code section 67.26. The redacted documents are in a separate folder named "Redacted."

*"We are withholding other documents in their entirety, pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030." [Emphasis Added.]*

October 21, 2012: Complainant sent the attached letter (Document #3) by Facsimile to Mr. Massey in which Complainant advised him that:

"There is no point in my considering whether any of these "confidentiality" protections — the attorney-client privilege and/or either of the (two) attorney work product doctrine(s) — are properly applied because you state that those exemptions apply to "other" public records, none of which you classify, name or otherwise identify. Attempting to do that would be a useless exercise in that I would have to assume how many records are withheld, specifically what kind of public record each one is and then determine whether or not I concur that one or two of those "protections" would apply.

"By combining several exemptions so that more than one of those exemptions could be applicable to each one and/or all of the withheld records, Mr. St. Croix has taken a position that is not defensible. It is incumbent on him to describe, in some comprehensible way, each of those withheld public records he claims is subject to the

attorney-client privilege exemption and each of those he claims is subject to either the absolute work product doctrine or the conditional work product doctrine.

"The response failed to mention several applicable provisions of the San Francisco Sunshine Ordinance, the most important of which is §67.24(b)(1), to wit:

§67.24 Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

Subsection (b) (1) provides, in part:

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

"Until I receive and review the copies of the records that are being made available to me, I can not determine whether any of those that I would expect should be included are not and, thus, may fall within one or both of subdivisions (ii) and (iii) of §67.24(b)(1). However, to the extent that any of the withheld records do fall within either of these subdivisions, they are not exempt by these express provisions of the Sunshine Ordinance."

November 1, 2012: Complainant sent the following email Mr. Massey (copy to Mr. St. Croix):

To: Steven.Massey@SFGOV.ORG  
From: Allen Grossman <grossman356@mac.com>  
Date: 11/01/2012 04:29PM  
Cc: john.st.croix@sfgov.org  
Subject: October 3, 2012 Records Request

Mr. Massey,

It has been 10 days since I sent you the attached October 21, 2012 letter by Facsimile. Since the letter raises some questions regarding the basis on which Mr. St. Croix's refused to make the copies of some unidentified public records available, I do think it

appropriate that he or you, on his behalf, respond to the letter. Ignoring the letter is not an appropriate response.

Allen Grossman


November 2, 2012 Mr. St. Croix responded by email (Document #4) as follows:

From: john.st.croix@sfgov.org  
Subject: Re: October 3, 2012 Records Request  
Date: November 2, 2012 3:04:50 PM PDT  
To: Allen Grossman <grossman356@mac.com>  
Cc: Steven.Massey@SFGOV.ORG

Mr. Grossman - This response is regarding your communication below and the attached letter to Steven Massey from you dated October 21, 2012. *You have already received all documents responsive to your request. We are not required to create documents that do not exist. I consider this matter closed. [Emphasis Added.]*

John St. Croix  
Executive Director, San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102-6053

Hearing: Complainant requests a public hearing before the Sunshine Ordinance Task Force.

  
Allen Grossman

Allen Grossman  
111 30<sup>th</sup> Avenue  
San Francisco, CA 94121-1005  
Email: grossman356@mac.com  
Phone: (415) 831-3720  
FAX: (415) 831-3721

VIA FACSIMILE

To: Mr. John St. Croix, Executive Director  
San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102-6053

Date: October 3, 2012

This is a request under the applicable provisions of California Public Records Act and the San Francisco Sunshine Ordinance ("Sunshine Ordinance") for copies of any and all public records, including those archived, in any form or media, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications, in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to:

- (1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the following Commission Notice:

Notice of Consideration of Proposed Regulations at the September 24, 2012 Regular Meeting of the Ethics Commission

At its regular meeting on Monday, September 24, 2012, at 5:30 p.m. in Room 400, City Hall, the San Francisco Ethics Commission will discuss draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force (SOTF) and provided guidance to staff for the development of the proposed amendments.

- (2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney.

In accordance with Section 67.25(d) of the Sunshine Ordinance, please provide the copies of any and all responsive public records as soon as reasonably possible on an incremental or "rolling"

#1

basis.

If the requested records are kept electronically or in PDF format, please send them in their original format by email to my above email address. If the records are kept in some other format, please scan the relevant page(s) to PDF format and send them by email to my above email address.

This public records request is to be read broadly and any exemptions to disclosure of any public information in such public records are to be construed narrowly.

  
Allen Grossman

From: Steven.Massey@SFGOV.ORG  
Subject: Response to records request - October 3, 2012  
Date: October 12, 2012 2:57:40 PM PDT  
To: Allen Grossman <grossman356@mac.com>

Mr. Grossman,

On October 3, 2012, Executive Director St. Croix received the following request from you:

"...copies of any and all public records...in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to: (1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the following Commission Notice: Notice of Consideration of Proposed Regulations at the September 24, 2012 Regular Meeting of the Ethics Commission...(2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney."

You requested that the Ethics Commission send the records to your e-mail address.

We have reviewed our files to identify records that are responsive to your request. Due to the volume of documents, I am unable to attach the responsive documents to this e-mail. The documents may be provided electronically on a compact disc. If you would like the Commission to provide the disc, there is a \$1.00 fee. If you would like to provide your own disc so that the documents can be stored, there is no fee.

A few of the documents have been redacted pursuant to California Government Code section 6254.21, in accordance with San Francisco Administrative Code section 67.26. The redacted documents are in a separate folder named "Redacted."

We are withholding other documents in their entirety, pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030.

Please let me know whether you would like the Commission to provide the disc or whether you will provide your own. The responsive documents to your request are available for inspection and copying.

Sincerely,

Steven Massey

#2



Information Technology Officer  
CCSF Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102  
(P) 415-252-3108  
(F) 415-252-3112  
Steven.Massey@sfgov.org  
<http://www.sfethics.org>

Allen Grossman  
111 30<sup>th</sup> Avenue  
San Francisco, CA 94121-1005  
Tel: (415) 831-3720  
Fax: (415) 831-3721  
Email: grossman356@mac.com

October 21, 2012

BY FACSIMILE

Mr. Steven Massey  
Information Technology Officer  
CCSF Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

Re: October 3, 2012 Records Request

Dear Mr. Massey:

In your October 12, 2012 Email responding to the subject Records Request you advised me:

“We are withholding other documents in their entirety, pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030.”

My Records Request was directed to Mr. St. Croix, Executive Director of the Ethics Commission. Although the complete response - that is, the copies of public records you are making available to me (including those with redactions) as described in your email and notice that the decision to withhold public records from disclosure - came from you, I can properly assume that Mr. St. Croix approved the response and that he takes full responsibility for it. If otherwise, please advise me.

So that we are looking at the specific sections of the state statutes to which you refer as the basis for withholding “other documents”, I quote them in full on the Schedule attached to this letter. CPRA §6254(k) is not an exemption by itself, but incorporates state and federal law exemptions. Evidence Code §§952 and 954 create the “attorney-client privilege” and CCP §2018.30 creates two so-called “work product” doctrines, one absolute and the other conditional. Mr. St. Croix relies on these two exemptions to justify his withholding of certain unidentified public records. However, in the case of the conditional work product doctrine - §2018.30(b) - it is not clear whether it is even applicable when no litigation is involved.

There is no point in my considering whether any of these “confidentiality” protections - the attorney-client privilege and/or either of the (two) attorney work product doctrine(s) - are properly applied because you state that those exemptions apply to “other” public records, none of which you classify, name or otherwise identify. Attempting to do that would be a useless exercise in that I would have to assume how many records are withheld, specifically what kind of public record each

#3

one is and then determine whether or not I concur that one or two of those "protections" would apply.

By combining several exemptions so that more than one of those exemptions could be applicable to each one and/or all of the withheld records, Mr. St. Croix has taken a position that is not defensible. It is incumbent on him to describe, in some comprehensible way, each of those withheld public records he claims is subject to the attorney-client privilege exemption and each of those he claims is subject to either the absolute work product doctrine or the conditional work product doctrine.

The response failed to mention several applicable provisions of the San Francisco Sunshine Ordinance, the most important of which is §67.24(b)(1), to wit:

§67.24 Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

Subsection (b) (1) provides, in part:

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

Until I receive and review the copies of the records that are being made available to me, I can not determine whether any of those that I would expect should be included are not and, thus, may fall within one or both of subdivisions (ii) and (iii) of §67.24(b)(1). However, to the extent that any of the withheld records do fall within either of these subdivisions, they are not exempt by these express provisions of the Sunshine Ordinance.

§67.25 provides, in part:

"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..."

§67.27 provides, in part:

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. [Emphasis added.]


(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere. {Emphasis Added.}

(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.

Taken together these provisions require Mr. St. Croix, as the custodian of the requested records, to review each of the withheld records, provide some description of each (without necessarily disclosing any public information in it that he considers exempt) and then cite the specific statutory exemption that he claims exempts it or the redacted information from disclosure.

Before I pursue my Records Request any further, Mr. St. Croix is reminded that he cannot summarily deny my constitutionally protected right to access public records and public information with broad claims of exemptions to a group of varying types of public records contrary to what the CPRA and the Sunshine Ordinance were designed to prevent.

Very Truly Yours,



Allen Grossman

CPRA § 6254(k): Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following: (k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

Evidence Code §952: As used in this article, "confidential communication between client and lawyer" means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship.

Evidence Code §954: Subject to Section 912 and except as otherwise provided in this article, the client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer if the privilege is claimed by:

(a) The holder of the privilege;

(b) A person who is authorized to claim the privilege by the holder of the privilege;  
or

(c) The person who was the lawyer at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure.

...The word "persons" as used in this subdivision includes partnerships, corporations, limited liability companies, associations and other groups and entities.

Code of Civil Procedure §2018.030:

(a) A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.

(b) The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice.

MEMORANDUM

Date: May 28, 2013

To: Members, Sunshine Ordinance Task Force

Re: Complaint # 12056:  
Grossman vs. John St. Croix, Executive Director, SF Ethics Commission

-----  
My complaint and Mr. St. Croix's response are to be heard at SOTF's June 5, 2013 regular meeting. Currently the SOTF has nine members, two short of the statutorily required eleven. Under the SOTF current bylaws, the "affirmative vote of a majority of the members of the Task Force (six votes) shall be required for the approval of all substantive matters."

Determinations by the SOTF whether a respondent custodian agency, department or City officer responding to a complaint has or has not complied with the Sunshine Ordinance are "substantive matters" requiring approval by six votes irrespective of the number of SOTF members voting.

Following a hearing on the complaint, the SOTF's practice has been to consider a motion with respect to the complaint's claims of respondent's non-compliance with the Sunshine Ordinance. That motion requires the "aye" vote of at least six members that the respondent had not complied. Thus, when less than all eleven members are present and voting, the complainant needs more than a simple majority for such a motion to pass. If all nine current members attend the June 5 meeting and vote on my complaint, a two-thirds majority – six out of nine votes – will be required for a favorable determination. If only eight members attend and vote, the percentage rises to 75%; if only seven attend and vote, it is 87.5%. As a result, this combination of the six-vote rule and the formulation of the motion stack the deck against every complainant.

However, this combination is contrary to both the Sunshine Ordinance and the CPRA. *The Sunshine Ordinance and the CPRA both definitively provide that all public records are presumptively fully disclosable and the burden is on the custodian to prove, i.e., justify, the application of a specific exemption.*

Sunshine Ordinance:

§67.21(g): "In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies."

§67.27 JUSTIFICATION OF WITHHOLDING:

"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 or 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.”

CPRA:

§6255(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.”

Thus, the burden of proving, i.e., “justifying”, the refusal to disclose the public record is on the respondent, not on the complainant to disprove any claimed “justification”.

For that reason, the SOTF’s practice with respect to motions involving such non-compliance with the Sunshine Ordinance should be changed. The motion must be, in effect, that the respondent has justified the application of the claimed exemption or prohibition to the public record(s) requested, not that the complainant has proven that the records are not exempt from disclosure. If the motion is put in such terms, the six-vote rule will be consistent with applicable law, not contrary to it. It will also bring some fairness back into the process.

From: john.st.croix@sfgov.org  
Subject: Re: October 3, 2012 Records Request  
Date: November 2, 2012 3:04:50 PM PDT  
To: Allen Grossman <grossman356@mac.com>  
Cc: Steven.Massey@SFGOV.ORG

Mr. Grossman - This response is regarding your communication below and the attached letter to Steven Massey from you dated October 21, 2012. You have already received all documents responsive to your request. We are not required to create documents that do not exist. I consider this matter closed.

John St. Croix  
Executive Director, San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102-6053

-----Allen Grossman <grossman356@mac.com> wrote: -----  
To: Steven.Massey@SFGOV.ORG  
From: Allen Grossman <grossman356@mac.com>  
Date: 11/01/2012 04:29PM  
Cc: john.st.croix@sfgov.org  
Subject: October 3, 2012 Records Request

Mr. Massey,

It has been 10 days since I sent you the attached October 21, 2012 letter by Facsimile. Since the letter raises some questions regarding the basis on which Mr. St. Croix's refused to make the copies of some unidentified public records available, I do think it appropriate that he or you, on his behalf, respond to the letter. Ignoring the letter is not an appropriate response.

Allen Grossman

[attachment "Ltr Massey 10-21-2012.pdf" removed by John St.Croix/  
ETHICS/SFGOV]

#4



Allen Grossman  
111 30<sup>th</sup> Avenue  
San Francisco, CA 94121-1005  
Tel: (415) 831-3720  
Fax: (415) 831-3721  
Email: grossman356@mac.com

December 18, 2012

By Facsimile and Email

Ms. Andrea Ausberry, Administrator  
Sunshine Ordinance Task Force  
City Hall - Room 244  
1 Dr. Carlton B. Goodlett Place San  
Francisco, CA 94102-4689

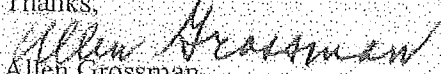
RE: Sunshine Complaint No. 12056

Dear Ms. Ausberry;

When reviewing my Complaint and my original records request I found I had to revise the "Alleged Violations" section to conform to my request. Since I wasn't sure how you would want it handled, I decided to send you a corrected first page of the Complaint with that changed section, which you can substitute for the first page. It is attached.

Please let me know if that is not how you want it handled. If acceptable, please send me a copy of yours to Mr. St. Croix and the other persons who received the original version.

Thanks,

  
Allen Grossman

ALLEN GROSSMAN  
111 30<sup>th</sup> AVENUE  
SAN FRANCISCO, CALIFORNIA 94121-1005  
TELEPHONE: (415) 831-3720  
FACSIMILE: (415) 831-3721  
Email: grossman356@mac.com

**FACSIMILE TRANSMITTAL**

**To:** Andrea S. Ausberry  
Administrator  
Sunshine Ordinance Task Force

**FAX Number:** (415) 554-5163

**Phone Number:** (415) 554-7724

**Number of Pages:** 3, including cover sheet

**Date:** December 18, 2012

**From:** Allen Grossman

**Message:** Letter + Amended Page 1 dated today re #12056.

**IF YOU DO NOT RECEIVE ALL PAGES OF THIS TRANSMISSION,  
PLEASE CALL (415) 831-3720 AS SOON AS POSSIBLE**

CONFIDENTIALITY NOTE: The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the receiver of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

TRANSMISSION VERIFICATION REPORT

TIME : 12/18/2012 09:03  
NAME : SFUFG/GROSSMAN  
FAX : 4158313721  
TEL : 4158313720  
SER.# : 60J395977

DATE, TIME	12/18 09:02
FAX NO./NAME	5545163
DURATION	00:01:25
PAGE(S)	03
RESULT	OK
MODE	STANDARD

ALLEN GROSSMAN  
111 30<sup>th</sup> AVENUE  
SAN FRANCISCO, CALIFORNIA 94121-1005  
TELEPHONE: (415) 831-3720  
FACSIMILE: (415) 831-3721  
Email: grossman356@mac.com

*RESENDING*  
FACSIMILE TRANSMITTAL

To: Andrea S. Ausberry  
Administrator  
Sunshine Ordinance Task Force

FAX Number: (415) 554 -5163

Phone Number: (415) 554 -7724

Number of Pages: 14, including cover sheet

Date: November 19, 2012

From: Allen Grossman

Message: Complaint against John St. Croix,  
Executive Director, Ethics Commission

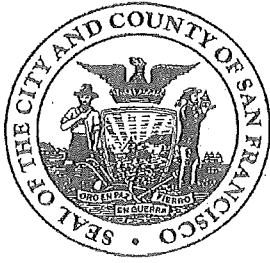
IF YOU DO NOT RECEIVE ALL PAGES OF THIS TRANSMISSION,  
PLEASE CALL (415) 831-3720 AS SOON AS POSSIBLE

CONFIDENTIALITY NOTE: The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the receiver of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

TRANSMISSION VERIFICATION REPORT

TIME : 11/19/2012 10:45  
NAME : SFUFC/GROSSMAN  
FAX : 4158313721  
TEL : 4158313720  
SER. # : 60J395977

DATE, TIME	11/19 10:38
FAX NO./NAME	5545163
DURATION	00:06:49
PAGE(S)	14
RESULT	OK
MODE	STANDARD



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

JAMIEENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
COMMISSIONER

PAUL A. RENNE  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

## Via E-Mail

December 6, 2012

Andrea Ausberry, Administrator  
Sunshine Ordinance Task Force  
City Hall – Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**RE: Sunshine Complaint No. 12056**

Dear Ms. Ausberry:

On November 29, 2012, the Ethics Commission received notice of Case No. 12056 (*Allen Grossman v John St. Croix, Executive Director, Ethics Commission*). In his complaint, Mr. Grossman alleged that Mr. St. Croix failed “to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Section 67.27, subdivisions (a) and (b) and their required disclosure under Section 67.42, subdivision (b)(1)(i) and (ii).”

### Background

On October 3, 2012, Mr. Grossman faxed a public records request to the Ethics Commission for the following:

“...copies of any and all public records...in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to: (1) All prior drafts and final versions of (a) the September 14, 2012 draft amendments to the Commission's regulations governing the handling of complaints related to alleged violations of the Sunshine Ordinance and referrals from the Sunshine Ordinance Task Force ("Draft Amendments") and (b) the September 14, 2012 staff report ("Staff Report") referred to in the following Commission Notice: Notice of Consideration of Proposed Regulations at the September 24, 2012 Regular Meeting of the Ethics Commission...(2) The preparation, review, revision and distribution of all prior drafts and final versions of the Draft Amendments and Staff Report, including, without limitation, emails, memoranda, notes, letters or other correspondence or communications to or from the San Francisco City Attorney, any Deputy City Attorney or any other person in the Office of the San Francisco City Attorney.”

Steven Massey responded to this request on October 12, 2012. He provided 127 documents electronically; six had been partially redacted. He also informed Mr. Grossman that the Commission was “withholding other documents in their entirety,

pursuant to California Government Code section 6254(k); California Evidence Code sections 952, 954; and California Code of Civil Procedure section 2018.030.”

On October 21, 2012, Mr. Grossman faxed a letter to Mr. Massey. He stated that it was “incumbent on [Mr. St. Croix] to describe, in some comprehensible way, each of those withheld public records he claims is subject to the attorney-client privilege exemption and each of those he claims is subject to either the absolute work product doctrine or the conditional work product doctrine.” Mr. Grossman referenced Sunshine Ordinance sections 67.24(b)(ii) and (iii), which describe specific records that are subject to disclosure, notwithstanding any exemptions otherwise provided by law. Mr. Grossman noted that if any of the withheld records fall within either of the subsections, then the records “are not exempt by these express provisions of the Sunshine Ordinance.”

On November 1, 2012, Mr. Grossman sent an e-mail to Mr. Massey about his October 21, 2012 letter that “raises some questions regarding the basis on which Mr. St. Croix’s refused to make the copies of some unidentified public records available...Ignoring the letter is not an appropriate response.”

On November 2, 2012, I responded via e-mail. I informed Mr. Grossman that he had already received the documents responsive to his request and that the Commission is not required to create documents that do not exist.

On or about November 19, 2012, Mr. Grossman filed this complaint with the Sunshine Ordinance Task Force.

#### Applicable Law

##### SEC. 67.24. PUBLIC INFORMATION THAT MUST BE DISCLOSED.

Notwithstanding a department’s legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

...

##### (b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

- (i) A pre-litigation claim against the City;
- (ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;
- (iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

##### SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

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 or elsewhere.

...

#### Analysis

Mr. Grossman first alleges that I failed “to justify withholding unidentified public records by demonstrating that each such unidentified withheld record is exempt under express provisions of the Sunshine Ordinance, as required under Sunshine Ordinance Section 67.27, subdivisions (a) and (b).” Mr. Grossman has misinterpreted Sunshine Ordinance sections 67.27(a) and (b). There is no requirement in those subsections that a responding department must “demonstrat[e] that each such unidentified withheld record is exempt.” According to the *Good Government Guide: 2010-2011 Edition* (“GGG”), published by the Office of the City Attorney, the law does not require a responding department withholding records to create a privilege log identifying the withheld records. (See GGG, p. 86.)

Sunshine Ordinance section 67.27 requires that any withholding of information 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 or elsewhere...”

In its October 12, 2012 e-mail response to Mr. Grossman, staff provided the required justification of withholding of information, citing California Government Code section 6254(k); California Evidence Code sections 952 and 954; and California Code of Civil Procedure section 2018.030. This written justification was made in accordance with both Sunshine Ordinance section 67.27(a) and section 67.27(b). Mr. Grossman even italicized staff’s written justification on page 2 of his complaint. As the Ethics Commission is not required to create documents that do not exist, there were no additional documents for staff to provide that were responsive to his October 3, 2012 request. Therefore, I respectfully request that the Sunshine Ordinance Task Force find no violation, as staff has provided Mr. Grossman with a written justification of withholding of records in a timely manner, in accordance with Sunshine Ordinance section 67.27(a) and (b).

Secondly, Mr. Grossman also appears to allege that I failed to disclose documents that were required to be disclosed under “Section 67.42, subdivision (b)(1)(i) and (ii).” Section 67.42 of the Sunshine Ordinance does not exist. Therefore, I will respond to this allegation under the assumption that Mr. Grossman intended to reference section 67.24(b)(1)(i) and (ii).

In his October 21, 2012 letter (which Mr. Grossman attached as “Document #3” to his complaint), Mr. Grossman stated that the October 12, 2012 “response failed to mention several applicable provisions of the San Francisco Sunshine Ordinance, the most important of which is §67.24(b)(1)...” It is unclear what law requires that staff mention this particular provision of the



Sunshine Ordinance in its response to his October 3, 2012 records request. Sunshine Ordinance section 67.24(b)(1) identifies public information that must be disclosed. There is no requirement that a responding party specifically mention it in its response to a public records request.

In responding to all public record requests, staff thoroughly reviews the Commission's files to ensure that we identify all records that are responsive to the request. This review includes a review for any documents subject to disclosure under Sunshine Ordinance subsections 67.24(b)(1)(i) and (ii). Mr. Grossman appears to have made an assumption that documents subject to disclosure under these subsections were withheld. That is not the case.

Mr. Grossman received all responsive documents to his request that were subject to disclosure. He received these documents in the format requested and in a timely manner.

Therefore, as Mr. Grossman received all documents subject to disclosure and as staff justified the withholding of information in its October 12, 2012 e-mail response in accordance with Sunshine Ordinance 67.27, I respectfully request that the Sunshine Ordinance Task Force dismiss this matter.

Sincerely,

/s/ *John St. Croix*

John St. Croix  
Executive Director

Cc (e-mail): Allen Grossman, Complainant

Ausberry, Andrea

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**From:** Allen GROSSMAN [grossman356@me.com]  
**Sent:** Monday, March 18, 2013 4:02 PM  
**To:** sunshinechairgrant@gmail.com  
**Cc:** SOTF; St.Croix, John  
**Subject:** SOTF Complaint #12056

Dear Chair Grant,

This complaint was refiled on November 29, 2012. At that time, I expected it would be heard with a month or two as had been the SOTF's prior practice with the other complaints I filed over a period of four or five years. The SOTF's practice had been to observe the requirements of Section 67.21(e) of the Sunshine Ordinance that requires the SOTF to inform the complainant of its determination "no later than 45 days" from when the petition (complaint) is received. That section is quoted below.

On February 25, I sent the SOTF Administrator an email requesting that my complaint #12056 be put on the March 6, 2013 agenda -- some 98 days after the second filing. I asked that she take that up with you. As you know, my complaint was not put on the agenda.

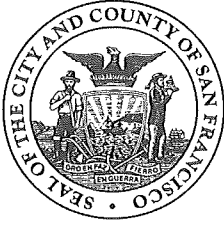
In any case, my wife and I are leaving for a long planned five week vacation on April 3, the date of your next regularly scheduled meeting. It does not appear there will be a special SOTF meeting before then. We will still be away on May 1, as well, when the following regular meeting is scheduled. That means that the hearing on my complaint will have to wait until the June SOTF meeting, unless a May Special Meeting is called after May 9th.

For that reason, I would appreciate your setting the hearing of my complaint for the June meeting, assuming Mr. St. Croix is available.

Thank You,

Allen Grossman

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public.



# SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO MINUTES

Hearing Room 408  
City Hall, 1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

September 4, 2013 – 4:00 PM

## Regular Meeting

**Members:** Kitt Grant (Chair), Louise Fischer (Vice-Chair),  
Richard Knee, Allyson Washburn, David Pilpel,  
David Sims, Todd David, Chris Hyland, Bruce Oka

### 1. CALL TO ORDER, ROLL CALL AND AGENDA CHANGES

The meeting was called to order at 4:12 p.m. Members Washburn, David and Sims were noted absent. There was a quorum. Members Sims was noted present at 4:25 p.m.

Acting Administrator Victor Young announced a request that File No. 12059 (Item 6) be continued, was received from both the Complainant and Respondent.

**Member Knee, seconded by Member Hyland, moved to accept the Complainant's and Respondent's request for continuance of File No. 12059 with corrections to the title and CONTINUE to October 2, 2013.**

#### **Public Comment:**

None.

#### **The motion PASSED by the following vote:**

Ayes: 6 – Knee, Pilpel, Hyland, Oka, Fischer, Grant

Absent: 3 – Washburn, Sims, David

Noes: 0

### 2. Election of Chair and Vice Chair - Election of Officers; per Article II, Section 3 of the By-Laws.

Vice-Chair Fischer, acting as Chair Pro Tem, requested nominations by the SOTF for the position of Chair.

**Member Pilpel, seconded by Member Knee, nominated Member Grant to the position of Chair.**

**Public Comment:**

Ray Hartz, Jr. suggested that the Task Force delay the election of officers to allow all members a chance to participate in the selections.

**Member Grant was elected to the position as Chair of the SOTF by the following vote:**

Ayes: 6 – Knee, Pilpel, Sims, Hyland, Fisher, Grant

Noes: 1 - Oka

Absent: 2 – Sims, David

Chair Grant assumed the position of Chair of the SOTF and requested nominations by the SOTF for the position of Vice-Chair.

**Member Knee, seconded by member Pilpel, nominated Louise Fischer to the position of Vice-Chair of the SOTF.**

**Public Comment:**

None.

**Kitt Grant was elected to the position as Chair of the SOTF by the following vote:**

Ayes: 7 – Knee, Pilpel, Sims, Hyland, Oka, Fisher, Grant

Absent: 2 – Sims, David

3. **File No. 12056:** The Compliance and Amendments Committee has referred File No. 12056, Allen Grossman against John St. Croix, Executive Director, Ethics Commission for allegedly failing to justify withholding unidentified public records as exempt under provisions of the Sunshine Ordinance.

Allen Grossman (Complainant) provided an overview of the complaint and further requested the Task Force to find violations. There were no speakers in support of the Complainant. John St. Croix, Executive Director, Ethics Commission (Respondent), provided an overview of the Ethics Commission defense and requested the Task Force to dismiss the complaint. There were no speakers who offered facts and evidence in support of the Respondent. A question and answer period followed. The Complainant responded to questions raised throughout the discussion and further requested the Task Force to find violations. Respondent provided a rebuttal. The Complainant provided a rebuttal and further requested the Task Force to find violations.

**Member Knee, seconded by Member Hyland, moved to find John St. Croix, Executive Director, Ethics Commission, in violation of the Sunshine Ordinance and to refer the complaint to the Board of Supervisors and the Ethics Commission for procedural actions to remedy the violations.**

**Public Comment:**

Ray Hartz expressed support with the motion and agreed that documents should be reviewed thoroughly before being exempted; Female Speaker expressed concerns with Ethics Commission staff.

**The motion PASSED by the following vote:**

Ayes: 6 – Knee, Sims, Hyland, Oka, Fischer, Grant

Noes: 1 – Pilpel

Absent: 2 – Washburn, David

4. **Public Comment:**

Ray Hartz expressed concern that the Education, Outreach and Training committee has not yet communicated with Clerk of the Board in regards to including a 150 word summary in the Board of Supervisors minutes and file additional complaints; Allen Grossman expressed concern over the lack of members at SOTF meeting to give the public a fair hearing and requested changes to the '6 vote rule'; Dominic Maionchi express concerns over statements made before the Ethics Commission and retention of sent e-mails from city officials; Female Speaker expressed concerns with the actions of the Ethics Commission staff during her office visit; James Chaffee expressed concerns of the Sunshine bill of Rights and the conduct of members of the SOTF.

5. **File No. 12058:** The Compliance and Amendments Committee has referred File No. 12058, Dominic Maionchi against Recreation and Park for allegedly failing to provide records requested pertaining to berthing contracts between the City and County of San Francisco and slip holders.

Dominic Maionchi (Complainant) provided an overview of the complaint and further requested the Task Force to find violations. There were no speakers in support of the Complainant. Olive Gong, Recreation and Park Department, (Respondent), provided an overview of the Recreation and Park Department defense and requested the Task Force to dismiss the complaint. There were no speakers who offered facts and evidence in support of the Respondent. A question and answer period followed. The Complainant responded to questions raised throughout the discussion and further requested the Task Force to find violations. Respondent provided a rebuttal. The Complainant provided a rebuttal and further requested the Task Force to find violations.

**Member Sims, seconded by Member Pilpel, moved to continued to October 2, 2013, and to notice Phil Ginsberg, General Manager, and Ms. Ballard, Recreation and Park Department, directly of the meeting.**

**Public Comment:**

Ray Hartz expressed that notices to departments is the same as noticing the department head.

**The motion PASSED by the following vote:**

Ayes: 7 – Knee, Pilpel, Sims, Hyland, Oka, Fischer, Grant

Absent: 2 – Washburn, David

6. **File No. 12059:** The Compliance and Amendments Committee has referred File No. 12059, Supreet Pabla, SEIU Local 1021 against Human Services Agency for allegedly failing to provide records requested relevant to the representation of the bargaining unit's employees.

**This item was continued to the October 2, 2013, meeting of the SOTF under 'Agenda Changes'**

7. **File No. 13012:** Complaint filed by Michael Fondanova, representing Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge.

**Member Knee, seconded by Member Hyland, moved to find jurisdiction.**

**Public Comment:**

None.

**The motion PASSED without objection.**

Michael Fondanova (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers in support of the Complainant. Margaret Sing, Assessor/Recorder's Office, (Respondent), provided an overview of the Office of the Assessor-Recorder's defense and requested the Task Force to dismiss the complaint. There were no speakers who offered facts and evidence in support of the Respondent. A question and answer period followed. The Respondent did not provide a rebuttal. The Complainant provided a rebuttal and further requested the Task Force to find violation.

**Member Pilpel, seconded by Member Knee, moved to continue the item to October 2, 2013, to allow the Assessor/Recorder's Office to perform additional research.**

**Public Comment:**

None.

**The motion PASSED by the following vote:**

Ayes: 7 – Knee, Pilpel, Sims, Hyland, Oka, Fischer, Grant

Absent: 2 – Washburn, David

**MEETING RECESS - 6:24 p.m. to 6:33 p.m.**

8. **File No. 13017:** Complaint filed by William Clark against the Office of the City Attorney for allegedly failing to provide a response to a records request regarding communications between the Arts Commission and Office of the City Attorney concerning time billing for FY 2010-2011.

**Member Pilpel, seconded by Member Knee, moved to find jurisdiction.**

**Public Comment:**

None.

**The motion PASSED without objection.**

William Clark (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers in support of the Complainant. Jack Song, City Attorney's Office, (Respondent), provided an overview of the Office of the City Attorney defense and requested the Task Force to dismiss the complaint. There were no speakers who offered facts and evidence in support of the Respondent. A question and answer period followed. The Respondent did not provide a rebuttal. The Complainant provided a rebuttal and further requested the Task Force to find violation.

**Member Knee, seconded by Member Hyland, moved to find Jack Song, City Attorney's Office, in violation of Sunshine Ordinance Section 67.21(e) due to his absence from the meeting prior to the conclusion.**

**Public Comment:**

Robert Clark and Female Speaker expressed concern that there was not a representative from the City Attorney's Office to answer questions.

**The motion FAILED by the following vote:**

Ayes: 3 – Knee, Hyland, Oka

Noes: 4 – Pilpel, Sims, Fischer, Grant

Absent: 2 – Washburn, David

**Public Comment:**

Robert Clark expressed various concerns; Female Speaker expressed concerns over the record keeping methods of the City Attorney Office.

**Due to a lack of a motion, the Task Force FOUND NO VIOLATION.**

9. **File No. 13019:** Complaint filed by Michael Petrelis against the Office of the District Attorney for allegedly violating Sunshine Ordinance section 67.29-6; failing to disclose statements regarding financial interest with the City from donors. *(attachment)*

Michael Petrelis (Complainant) did not appear for the hearing. There were no speakers in support of the Complainant. Katie Miller, District Attorney's Office, (Respondent), stated that the District Attorney had provided their argument in writing and was opposed to a continuance. There were no speakers who offered facts and evidence in support of the Respondent.

**Member Sims, seconded by Member Oka, moved to continue the item to October 2, 2013.**

**Public Comment:**

None.

**The motion FAILED by the following vote:**

Ayes: 3 – Knee, Sims, Oka  
Noes: 4 – Pilpel, Hyland, Fischer, Grant  
Absent: 2 – Washburn, David

**Member Knee, seconded by Member Hyland, moved to table the item.**

**Public Comment:**

None.

**The motion PASSED by the following vote:**

Ayes: 3 – Knee, Sims, Hyland, Oka  
Noes: 4 – Pilpel, Fischer, Grant  
Absent: 2 – Washburn, David

**10. Approval of Minutes from the March 6, 2013 Regular Meeting.**

**Member Pilpel, seconded by Member Knee, moved to CONTINUE Items 10 through 15, to the October 2, 2013, meeting.**

**Public Comment:** None.

**The motion PASSED without objection.**

**11. Approval of Minutes from the April 3, 2013 Regular Meeting.**

**Member Pilpel, seconded by Member Knee, moved to CONTINUE Items 10 through 15, to the October 2, 2013, meeting.**

**Public Comment:** None.

**The motion PASSED without objection.**

**12. Approval of Minutes from the May 1, 2013 Regular Meeting.**

**Member Pilpel, seconded by Member Knee, moved to CONTINUE Items 10 through 15, to the October 2, 2013, meeting.**

**Public Comment:** None.

**The motion PASSED without objection.**

**13. Approval of Minutes from the June 5, 2013 Regular Meeting.**

**Member Pilpel, seconded by Member Knee, moved to CONTINUE Items 10 through 15, to the October 2, 2013, meeting.**



**Public Comment:** None.

**The motion PASSED without objection.**

14. **Approval of Minutes from the July 9, 2013 Special Meeting.**

Member Pilpel, seconded by Member Knee, moved to CONTINUE Items 10 through 15, to the October 2, 2013, meeting.

**Public Comment:** None.

**The motion PASSED without objection.**

15. **Approval of Minutes from the August 7, 2013 Regular Meeting.**

Member Pilpel, seconded by Member Knee, moved to CONTINUE Items 10 through 15, to the October 2, 2013, meeting.

**Public Comment:** None.

**The motion PASSED without objection.**

16. **Report: Compliance and Amendments Committee meeting of August 20, 2013.**

Member Knee provided a summary of the Compliance and Amendments Committee meeting of August 20, 2013.

**Speakers:** None.

17. **Administrator's Report.**

Report was given by Andrea Ausberry, Sunshine Ordinance Task Force Administrator.

18. **Announcements, Comments, Questions, and Future Agenda Items**

Member Knee stated that he will be unavailable from September 13, 2013, to September 27, 2013; expressed concern of the vacancies of seats 1 and 4 of the SOTF and request that action be taken to request the positions be filled.

Member Pilpel stated that a special meeting of the Education, Outreach and Training Committee has been scheduled for September 16, 2013, at 3:00 p.m.

19. **ADJOURNMENT**

There being no further business, the meeting was adjourned at 7:38 p.m.

**APPROVED: April 30, 2014**

*Victor Young*

**Victor Young  
Administrator  
Sunshine Ordinance Task Force**



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

Date: January 21, 2015

PAUL A. RENNE  
VICE-CHAIRPERSON

To: Members, Ethics Commission

BRETT ANDREWS  
COMMISSIONER

From: Jesse Mainardi, Deputy Executive Director

BEVERLY HAYON  
COMMISSIONER

Re: **Show Cause Hearing – Ethics Complaint 01-140107**

PETER KEANE  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

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A scheduled Show Cause Hearing concerns a referral letter and an Order of Determination (“Order”) delivered by the Sunshine Ordinance Task Force (“Task Force”) to the Ethics Commission on November 21, 2013 regarding a complaint Allen Grossman filed against John St. Croix, Executive Director of the Ethics Commission. The referral was made pursuant to section 67.30(c) of the Sunshine Ordinance and named Mr. St. Croix as the Respondent. This matter was previously continued pending the resolution of litigation, as set forth below.

### Background

According to the Order, Allen Grossman filed a complaint with the Task Force on November 19, 2012 against the Respondent and alleged that the Respondent failed to fully respond to his public records request dated October 3, 2012. The Complainant alleged violations of public records laws, specifically including Sunshine Ordinance sections 67.21(b), 67.27(a) & (b), and 67.24(b)(1)(i) & (iii). The Task Force heard the matter on June 5, 2013 and found Sunshine Ordinance section 67.21(b) and 67.24(b)(1) to be applicable to this case. The Task Force found that the requested records “are disclosable” and that Respondent violated section 67.21(b) for failure to provide the records within ten days following receipt of a request and section 67.24(b)(1) for withholding records subject to disclosure.

The Order was issued on June 24, 2013 and Respondent was ordered to release the records and appear before the Compliance and Amendments Committee on August 20, 2013. The Compliance and Amendments Committee heard the matter on August 20, 2013 and referred the matter back to the Task Force.

On September 4, 2013, the Task Force heard the matter again. According to the referral letter, the Task Force moved to find Respondent in violation of the Sunshine Ordinance and voted to refer the complaint to the Board of Supervisors and the Ethics Commission for violating sections 67.21(b), 67.27(a)(b), and 67.24(b)(1)(i)&(iii). On

January 27, 2014, the Board of Supervisors notified the Ethics Commission that it had closed this matter after taking no action.

On January 8, 2014, Respondent requested a continuance as the referral alleged violations of the Sunshine Ordinance that were also before the Court of Appeal of the State of California, First Appellate District (appeal from the Superior Court of California, Case # CPF-13-513221), in litigation originally initiated by the Complainant. Chairperson Hayon granted the request for a continuance on January 10, 2014. The Court of Appeal issued its decision on the matter on July 28, 2014 in favor of the Respondent, and the Supreme Court of California denied Complainant's Petition for Review on November 12, 2014. Due to notice requirements and the cancellation of the Ethics Commission's regular meeting in December 2014, the January 2015 regular meeting of the Ethics Commission is the first opportunity following the Supreme Court's denial to schedule this hearing.

#### Hearing Procedures and Scheduling

This matter will be heard under Chapter Two of the Ethics Commission Regulations for Handling Violations of the Sunshine Ordinance ("Regulations"). This matter is scheduled to be heard at a Show Cause Hearing during the next regular Ethics Commission meeting at **5:30 PM on Monday, January 26, 2015**, in Room 400 in City Hall.

According to Chapter Two of the Regulations, the Respondent bears the burden to show that he or she did not violate the Sunshine Ordinance. (*See* Regulations, Chapter Two, § II.B.) The Commission is required to deliberate on this matter in public and public comment will be allowed at the hearing. (*See* Regulations, Chapter Two, § II.D.) The votes of at least three Commissioners are required to make a finding that a Respondent has met his or her burden and has not committed a violation of the Sunshine Ordinance. The finding must be supported by findings of fact and conclusions of law and must be based on the entire record of the proceedings. (*See* Regulations, Chapter Two, § II.D.)

Neither the Respondent nor the Complainant is required to attend the hearing. However, if either party fails to appear, and the Commission did not grant the party a continuance or reschedule the matter under Chapter Four, section I.E, then the Commission may make a decision in the party's absence. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. Here, neither party has requested a continuance.

The Respondent and the Complainant may speak on his or her own behalf at the hearing, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal. Unless otherwise decided by the Commission, formal rules of evidence do not apply to the hearing.

Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Any documents provided must be provided to the opposing party and shall be

delivered to the Commission no later than five business days prior to the scheduled hearing. Here, Respondent submitted documents to the Commission on January 14, 2015; Complainant submitted documents to the Commission on January 16, 2015.

Copies of all of the documents received from the Task Force regarding this matter and both parties' written submissions have been attached to this memorandum; a copy of the Regulations is also attached.