

SUNSHINE ORDINANCE  
TASK FORCE



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. (415) 554-7724  
Fax No. (415) 554-7854  
TDD/TTY No. (415) 554-5227

**ORDER OF DETERMINATION**  
August 28, 2007

September 6, 2007

Jeff Ente  
[Jeffente@att.net](mailto:Jeffente@att.net)

The Honorable Supervisor Aaron Peskin  
Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102

Re: Complaint # 07057 filed by Jeff Ente against Supervisor Aaron Peskin for alleged incomplete production of documents.

Based on the information provided to the Task Force from complainant Jeff Ente and public comment, the following Order of Determination is adopted:

The Sunshine Ordinance Task Force finds that Supervisor Aaron Peskin violated Sections 67.21, 67.21e, 67.29-1, and 67.29-7 of the Sunshine Ordinance for failure to provide the requested records and failure to maintain records according to document retention schedules and in a professional and businesslike manner.

The Task Force is requesting that representatives from Supervisor Aaron Peskin's Office, the Department of Telecommunications and Information Services and the I.T. Manager for the Board of Supervisors to appear before the Compliance and Amendment Committee to speak on the issue on whether and how the Supervisor's email is backed-up, archived and/or retrievable.

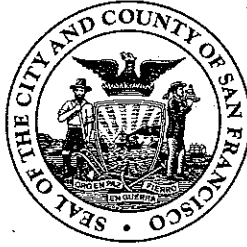
This Order of Determination was adopted by the Sunshine Ordinance Task Force on August 28, 2007 by the following vote: (Craven/Goldman)  
Ayes: Craven, Knee, Cauthen, Chu, Pilpel, Wolfe, Chan, Goldman, Williams  
Recused: Comstock

A handwritten signature in black ink, appearing to be "Erica Craven".

Erica Craven, Acting Chair  
Sunshine Ordinance Task Force

cc: Chris Vein, Director of DTIS  
Angela Calvillo, Clerk of the Board

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TDD/TTY No. (415) 554-5227

January 31, 2008

San Francisco Ethics Commission  
30 Van Ness # 3900  
San Francisco CA 94102

Regarding: #07057 complaint of Jeff Ente and the August 28, 2007 Order of Determination from the Sunshine Ordinance Task Force against Supervisor Aaron Peskin, through his representative David Noyola, for violation of Sunshine Ordinance § 67.21, 67.29-1, 67.29-7 and 67.21(e) of the Sunshine Ordinance for failure to provide the requested records and failure to maintain records according to document retention schedules and in a professional and businesslike manner.

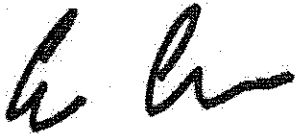
At their special meeting on Tuesday, January 8, 2008, the San Francisco Sunshine Ordinance Task Force voted that the attached complaint #07057 of Jeff Ente and the August 28, 2007 Task Force Order of Determination be referred to the Ethics Commission based on Supervisor Peskin's willful failure to comply with the Sunshine Ordinance, failure to comply with the Order of Determination, and failure to send an authorized representative to the Task Force hearings to respond to the complaint and the questions of of the Task Force. Under the Sunshine Ordinance, those acts shall be deemed official misconduct.

This request and referral is made under Sections 67.30 (c) and 67.34 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. Complaints involving allegations of willful violations of the Sunshine 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.

The enclosed CD contains material in support of this referral including (1) the August 28, 2007, Task Force Order of Determination, (2) documents regarding this complaint that have been submitted to the Sunshine Ordinance Task Force, (3) the minutes from the Task Force meetings of August 28, 2007, and January 8, 2008, and (4) the minutes from the Compliance and Amendments Committee meetings of September 10, 2007, October 10, 2007, November 14, 2007, and December 12, 2007.

Ethics Commission  
January 31, 2008  
Page 2 of 2

If you need any further information, including tape recordings of any of the meetings referenced above, please feel free to contact me, or the Task Force Administrator Frank Darby at (415) 554-7724.



Erica Craven, Vice Chair  
Sunshine Ordinance Task Force

cc: Jeff Ente, Complainant  
Supervisor Aaron Peskin, President  
David Noyola, Office of Supervisor Aaron Peskin  
Rose Chung, Office of Supervisor Aaron Peskin  
Ernie Llorente, Deputy City Attorney



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

**CONFIDENTIAL**

SUSAN J. HARRIMAN  
CHAIRPERSON

EMI GUSUKUMA  
VICE-CHAIRPERSON

EILEEN HANSEN  
COMMISSIONER

JAMIENNE S. STUDLEY  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

**Sent via Interoffice Mail**

October 30, 2008

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

**Re: Ethics Complaint No. 04-080204**

Dear Vice-Chair Craven:

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

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

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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read 'John St. Croix', written over the word 'Sincerely,'.

John St. Croix  
Executive Director

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**TDD/TTY No. (415) 554-5227**

November 27, 2007

November 29, 2007

Allen Grossman  
111 – 30<sup>th</sup> Avenue  
San Francisco, CA 94121-1005

Paul Henderson  
Office of the District Attorney  
850 Bryant Street, 3<sup>rd</sup> Floor  
San Francisco, CA 94103

Re: Complaint #07077 by Allen Grossman against the Office of the District Attorney (DA) for violation of Sections 67.21 (b), 67.25 (a) of the Sunshine Ordinance, and CPRA Section 6253 (b) for alleged failure to respond to an immediate disclosure requested submitted on September 20, 2007.

Based on the information provided to the Task Force from the Complainant Allen Grossman, Respondent Sandip Patel, and hearing public comment, the following Order of Determination is adopted:

The Sunshine Ordinance Task Force finds the District Attorney's Office in violation of Sections 67.21, 67.21-1, 67.25, 67.26, and 67.27 of the Sunshine Ordinance and Government Code Sections 6253 and 6253.9 for failure to provide records, failure to use computer technology to provide access to records, failure to respond in a timely manner, failure to keep withholding to a minimum, and failure to justify withholding. The District Attorney's Office is instructed to provide the responsive documents that have not been provided to Mr. Grossman, including any log from the Arc Soft program that shows the date files were backed-up or archived, within 5 days after the issuance of this Order of Determination.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on November 27, 2007 by the following vote: ( Comstock / Goldman )

Ayes: Craven, Knee, Cauthen, Chu, Comstock, Pilpel, Wolfe, Goldman, Williams

Absent: Chan

A handwritten signature in black ink, appearing to read "Doug Comstock".

Doug Comstock, Chair  
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney  
Sandip Patel, District Attorney's Office

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January 31, 2008

San Francisco Ethics Commission  
30 Van Ness # 3900  
San Francisco CA 94102

Regarding: #07077 complaint of Allen Grossman and the November 27, Order of Determination from the Sunshine Ordinance Task Force against the Office of the District Attorney, through its representative Sandip Patel, for violation of Sunshine Ordinance §§67.21, 67.21-1, 67.25, 67.26, and 67.27 and Government Code Sections 6253 and 6253.9 for failure to provide records, failure to use computer technology to provide access to records, failure to respond in a timely manner, failure to keep withholding to a minimum, and failure to justify withholding.

At their special meeting on Tuesday, January 8, 2008, the San Francisco Sunshine Ordinance Task Force voted that the attached complaint #07077 of Allen Grossman and the November 27, 2007 Task Force Order of Determination be referred to the Ethics Commission with a finding of willful failure to comply with the Sunshine Ordinance, failure to comply with the Order of Determination, and failure to comply with Government Code Sections 6253 and 6253.9 of the California Public Records Act. Under the Sunshine Ordinance, those acts shall be deemed official misconduct.

This request and referral is made under Section 67.30 (c) and 67.34 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. Complaints involving allegations of willful violations of the Sunshine 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.

The enclosed CD contains material in reference to this referral including (1) the November 27, 2007 Task Force Order of Determination, (2) documents regarding this complaint that have been submitted to the Sunshine Ordinance Task Force, (3) the minutes from the Task Force meetings of November 27, 2007, and January 8, 2008, and (4) the minutes from the Compliance and Amendments Committee meeting of December 12, 2007.

Ethics Commission  
January 31, 2008  
Page 2 of 2

If you need any further information, including tape recordings of any of the meetings referenced above, please feel free to contact me, or the Task Force Administrator Frank Darby at (415) 554-7724.

A handwritten signature in black ink, appearing to read 'D Comstock', written in a cursive style.

Doug Comstock, Chair  
Sunshine Ordinance Task Force

cc: Allen Grossman, Complainant  
Kamala Harris, District Attorney  
Sandip Patel, District Attorney Representative  
Paul Henderson, Deputy District Attorney  
Ernie Llorente, Deputy City Attorney





# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

**CONFIDENTIAL**

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CHARLES L. WARD  
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JOHN ST. CROIX  
EXECUTIVE DIRECTOR

**Sent via Interoffice Mail**

October 30, 2008

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

**Re: Ethics Complaint No. 05-080204**

Dear Vice-Chair Craven:

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

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

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

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

Sincerely,

  
John St. Croix  
Executive Director

**SUNSHINE ORDINANCE  
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April 24, 2008

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

Regarding: Complaint No's 07080 (a) (b) & (c) filed by Dan Boreen against the Fire Department for alleged failure to provide records, failure to keep withholding to a minimum, failure to justify withholding, and untimely response.

At their regular meeting on Tuesday, March 25, 2008, the San Francisco Sunshine Ordinance Task Force ordered that the attached complaint #07080 (a) (b) & (c) of Dan Boreen against the Chief of the Fire Department be referred to the Ethics Commission for official misconduct and willful failure to comply with the Ordinance.

The Sunshine Ordinance Task Force finds Chief Joanne Hayes-White through Rob Boughn, the Department's representative, to be in violation of Sections 67.25, 67.26 and 67.27 of the Sunshine Ordinance for failure to produce all requested records, failure to provide all necessary information that is releasable from the calendar, and failure to comply with the Order of Determination issued by the Task Force. Attached with this referral is an analysis written by Erica Craven, Vice Chair of the Task Force, to Joanne Hayes-White, explaining, in detail, the legal requirements of disclosure in regard to the complaint.

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.

Attached to this letter is the November 27, 2007, Task Force Order of Determination, documents regarding this complaint that have been submitted to the Sunshine Ordinance Task Force, the minutes from the Task Force meetings of November 27, 2007, and March 25, 2007. Also included are the minutes of the Compliance and Amendments Committee of January 9, 2008, February 13, 2008, and March 12, 2008.

Ethics Commission

April 23, 2008

Page 2 of 2

If you need any further information, including tape recordings of any of the meetings referenced above, please feel free to contact me, or the Task Force Administrator Frank Darby at (415) 554-7724.

A handwritten signature in black ink, appearing to read 'D Comstock', written in a cursive style.

Doug Comstock, Chair  
Sunshine Ordinance Task Force

cc: Dan Boreen, Complainant  
Joanne Hayes-White, Fire Chief  
Rob Boughn,  
Ernie Llorente, Deputy City Attorney

**SUNSHINE ORDINANCE  
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**ORDER OF DETERMINATION**  
November 27, 2007

November 29, 2007

Dan Boreen  
3305 Third Street  
San Francisco, CA 94124

Rob Boughn  
San Francisco Fire Department  
698 2<sup>nd</sup> Street  
San Francisco, CA 94107

Re: Complaint #07080a by Dan Boreen against the Fire Department for violation of Sections 67.24-67.27; 67.29-5 of the Sunshine Ordinance, and CPRA Section 6254 for alleged failure to provide records, failure to keep withholding to a minimum, failure to justify withholding, and untimely response.

Based on the information provided to the Task Force from the Complainant Dan Boreen, Respondent Rob Boughn, and hearing public comment, the following Order of Determination is adopted:

The Sunshine Ordinance Task Force finds the Fire Department in violation of Sections 67.26 and 67.27 for failure to keep withholding to a minimum and failure to justify withholding. The Fire Department is instructed to provide the "City-paid benefit" type the Department redacted from the time rolls provided to Mr. Boreen within 5 days after the issuance of this Order of Determination.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on November 27, 2007 by the following vote: ( Comstock / Pilpel )  
Ayes: Craven, Knee, Cauthen, Chu, Comstock, Pilpel, Wolfe, Chan, Goldman, Williams

A handwritten signature in black ink, appearing to read "D. Comstock".

Doug Comstock, Chair  
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney

**SUNSHINE ORDINANCE  
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**TDD/TTY No. (415) 554-5227**

**ORDER OF DETERMINATION**

November 27, 2007

November 29, 2007

Dan Boreen  
3305 Third Street  
San Francisco, CA 94124

Rob Boughn  
San Francisco Fire Department  
698 2<sup>nd</sup> Street  
San Francisco, CA 94107

Re: Complaint #07080b of Dan Boreen against the Fire Department for violation of Sections 67.24-67.27; 67.29-5 of the Sunshine Ordinance, and CPRA Section 6254 for alleged failure to provide records, failure to keep withholding to a minimum, failure to justify withholding, and untimely response.

Based on the information provided to the Task Force from the Complainant Dan Boreen, Respondent Rob Boughn, and hearing public comment, the following Order of Determination is adopted:

The Sunshine Ordinance Task Force finds the Fire Department in violation of Sections 67.26 and 67.27 of the Sunshine Ordinance for failure to keep withholding to a minimum and failure to justify withholding. The department is instructed to provide the Department Head's calendar that has not been provided to Mr. Boreen within 5 days after the issuance of this Order of Determination. The Task Force further request that Chief Joanne Hayes-White attend the December 12, 2007, Compliance and Amendments Committee meeting regarding this matter.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on November 27, 2007 by the following vote: ( Comstock / Chan )

Ayes: Knee, Cauthen, Comstock, Wolfe, Chan, Goldman, Williams

Noes: Chu, Pilpel

Excused: Craven

A handwritten signature in black ink, appearing to read "Doug Comstock".

Doug Comstock, Chair  
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney

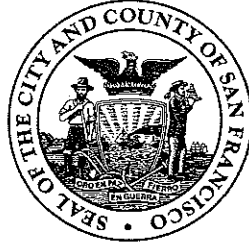
**SUNSHINE ORDINANCE  
TASK FORCE**



Joanne Hayes-White, Fire Chief

**City Hall**  
**1 Dr. Carlton B. Goodlett Place, Room 244**  
**San Francisco 94102-4689**  
**Tel. No. (415) 554-7724**  
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**ORDER OF DETERMINATION**  
November 27, 2007

November 29, 2007

Dan Boreen  
3305 Third Street  
San Francisco, CA 94124

Rob Boughn  
San Francisco Fire Department  
698 2<sup>nd</sup> Street  
San Francisco, CA 94107

Re: Complaint #07080c of Dan Boreen against the Fire Department for violation of Sections 67.24-67.27; 67.29-5 of the Sunshine Ordinance, and CPRA Section 6254 for alleged failure to provide records, failure to keep withholding to a minimum, failure to justify withholding, and untimely response.

Based on the information provided to the Task Force from the Complainant Dan Boreen, Respondent Rob Boughn, and hearing public comment, the following Order of Determination is adopted:

The Sunshine Ordinance Task Force finds the Fire Department in violation of Sections 67.25, 67.26 and 67.27 of the Sunshine Ordinance for failure to respond in a timely manner, failure to keep withholding to a minimum and failure to justify withholding. The department is instructed to provide the Deputy Chief of Administration's calendar that has not been provided to Mr. Boreen within 5 days after the issuance of this Order of Determination. The Task Force further requests that Deputy Chief of Administration Gary Massetani attend the December 12, 2007, Compliance and Amendments Committee meeting regarding this matter.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on November 27, 2007 by the following vote: ( Comstock / Chan )

Ayes: Knee, Cauthen, Comstock, Wolfe, Chan, Goldman, Williams

Noes: Chu, Pilpel

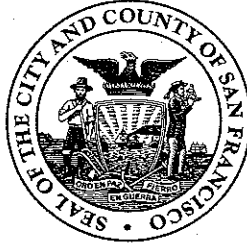
Excused: Craven

A handwritten signature in black ink, appearing to read "D. Comstock".

Doug Comstock, Chair  
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney  
Gary Massetani, Deputy Chief of Administration

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**ORDER OF DETERMINATION**  
November 27, 2007

November 29, 2007

Dan Boreen  
3305 Third Street  
San Francisco, CA 94124

Rob Boughn  
San Francisco Fire Department  
698 2<sup>nd</sup> Street  
San Francisco, CA 94107

Re: Complaint #07080d of Dan Boreen against the Fire Department for violation of Sections 67.24-67.27; 67.29-5 of the Sunshine Ordinance, and CPRA Section 6254 for alleged failure to provide records, failure to keep withholding to a minimum, failure to justify withholding, and untimely response.

Based on the information provided to the Task Force from the Complainant Dan Boreen, Respondent Rob Boughn, and hearing public comment, the following Order of Determination is adopted:

The Sunshine Ordinance Task Force finds the Fire Department in violation of Section 67.25 of the Sunshine Ordinance for failure to respond in a timely manner.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on November 27, 2007 by the following vote: ( Pilpel / Knee )

Ayes: Knee, Cauthen, Comstock, Pilpel, Wolfe, Chan, Goldman, Williams

Noes: Chu

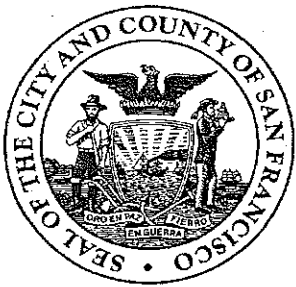
Excused: Craven

A handwritten signature in black ink, appearing to read "Doug Comstock".

Doug Comstock, Chair  
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney  
Gary Massetani, Deputy Chief of Administration





# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

**CONFIDENTIAL**

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CHAIRPERSON

EMI GUSUKUMA  
VICE-CHAIRPERSON

EILEEN HANSEN  
COMMISSIONER

JAMIENNE S. STUDLEY  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

**Sent via Interoffice Mail**

October 30, 2008

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

**Re: Ethics Complaint No. 13-080424**

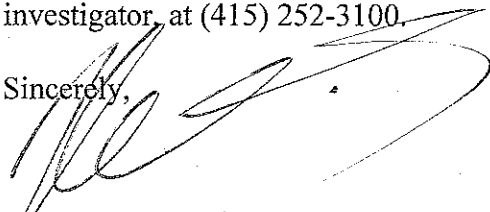
Dear Ms. Craven:

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

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

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

Sincerely,

  
John St. Croix  
Executive Director

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April 24, 2008

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

Regarding: Complaint #07087 filed by Allen Grossman against the Mayor's Office for alleged failure to respond to an Immediate Disclosure Request submitted on October 2, 2007, and repeated on October 19, 2007.

At their regular meeting on Tuesday, March 25, 2008, the San Francisco Sunshine Ordinance Task Force ordered that the attached complaint #07087 of Allen Grossman and the January 8, 2008, Task Force Order of Determination be referred to the Ethics Commission for official misconduct due to willful failure to comply with the Ordinance.

The Sunshine Ordinance Task Force finds the Mayor's Office, through its representatives, the Mayor and Nathan Ballard, in violation of Sections 67.21 (b) and (e), and 67.25 (a) of the Sunshine Ordinance and Section 6253 of the California Government Code for failure to provide records, failure to send an authorized representative to the hearing to respond to the complaint, failure to provide a response within 24 hours with a timeframe for compliance, and failure to comply with the Order of Determination issued by the Task Force.

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.

Attached to this letter is the January 8, 2008 Task Force Order of Determination, documents regarding this complaint that have been submitted to the Sunshine Ordinance Task Force, the minutes from the Task Force meeting of January 8, 2008, the Compliance and Amendments Committee meeting of March 12, 2008, and the March 25, 2008, Task Force meeting.

Ethics Commission

April 23, 2008

Page 2 of 2

If you need any further information, including tape recordings of any of the meetings referenced above, please feel free to contact me, or the Task Force Administrator Frank Darby at (415) 554-7724.

A handwritten signature in black ink, appearing to read 'D. Comstock', with a stylized flourish at the end.

Doug Comstock, Chair  
Sunshine Ordinance Task Force

cc: Allen Grossman  
Mayor, Gavin Newsom  
Nathan Ballard, Mayor's Office  
Ernie Llorente, Deputy City Attorney

**SUNSHINE ORDINANCE  
TASK FORCE**



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San Francisco 94102-4689  
Tel. No. (415) 554-7724  
Fax No. 415) 554-7854  
TDD/TTY No. (415) 554-5227**

**ORDER OF DETERMINATION  
January 8, 2008**

January 17, 2008

Allen Grossman  
111 – 30<sup>th</sup> Avenue  
San Francisco, CA 94121-1005

Honorable Mayor Gavin Newsom  
Mayor's Office  
City Hall, Room 200  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

Re: Complaint #07087 by Allen Grossman against the Mayor's Office for alleged failure to respond to a Immediate Disclosure Request submitted on October 2, 2007, and repeated on October 19, 2007.

Based on the information provided to the Task Force from the Complainant Allen Grossman, and hearing public comment, the following Order of Determination is adopted:

The Sunshine Ordinance Task Force finds the Mayor's Office in violation of Sections 67.21 (b) and (e), and 67.25 (a) of the Sunshine Ordinance and Section 6253 of the California Government Code for failure to provide records, failure to send an authorized representative to the hearing to respond to the complaint, and failure to provide a response within 24 hours with a timeframe for compliance. The Department is instructed to provide the responsive documents that were requested to Mr. Grossman within 5 days after the issuance of this Order of Determination.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on January 8, 2008 by the following vote: ( Craven / Cauthen )  
Ayes: Craven, Knee, Cauthen, Chu, Comstock, Wolfe, Chan, Goldman  
Excused: Pilpel, Williams

A handwritten signature in black ink, appearing to read "Doug Comstock".

Doug Comstock, Chair  
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney  
Nathan Ballard, Mayor's Office



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

**CONFIDENTIAL**

SUSAN J. HARRIMAN  
CHAIRPERSON

EMI GUSUKUMA  
VICE-CHAIRPERSON

EILEEN HANSEN  
COMMISSIONER

JAMIENNE S. STUDLEY  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

**Sent via Interoffice Mail**

October 30, 2008

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

**Re: Ethics Complaint No. 15-080424**

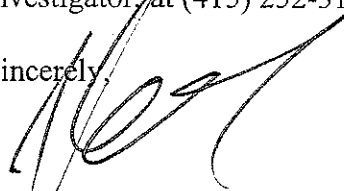
Dear Ms. Craven:

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

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

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

Sincerely,

  
John St. Croix  
Executive Director

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

April 24, 2008

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

Regarding: #07094 complaint of Kimo Crossman, and the February 26, 2008 Orders of Determination from the Sunshine Ordinance Task Force against the City Attorney's Office for failure to respond to a request for records, failure to provide records, and failure to post the department head's calendar on the website.

At their regular meeting on Tuesday, March 25, 2008, the San Francisco Sunshine Ordinance Task Force ordered that City Attorney Dennis Herrera be referred to the Ethics Commission for official misconduct based on willful failure to comply with the Ordinance.

The Task Force found that the City Attorney's Office through its representatives, Alexis Thompson, violated Sections 67.25, 67.26, and 67.29-5 of the Sunshine Ordinance for failure to respond in a timely manner, failure to keep withholding to a minimum, failure to provide the requested daily calendar, and failure to comply with the Order of Determination issued by the Task Force.

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.

Attached to this letter is the February 26, 2008, Task Force Order of Determination, documents regarding this complaint that have been submitted to the Sunshine Ordinance Task Force, the minutes from the Task Force meetings of January 22, 2008, February 26, 2008, and March 25, 2008, and the Compliance and Amendments meeting of March 12, 2008.

Ethics Commission

April 23, 2008

Page 2 of 2

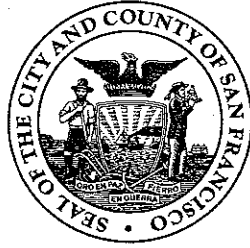
If you need any further information, including tape recordings of any of the meetings references above, please feel free to contact me, or the Task Force Administrator Frank Darby at (415) 554-7724.



Doug Comstock, Chair  
Sunshine Ordinance Task Force

cc: Kimo Crossman  
Alexis Thompson  
Matt Dorsey, City Attorney's Office  
Ernie Llorente, Deputy City Attorney

SUNSHINE ORDINANCE  
TASK FORCE



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. (415) 554-7724  
Fax No. 415) 554-7854  
TDD/TTY No. (415) 554-5227

**ORDER OF DETERMINATION**  
February 26, 2008

March 6, 2008

Kimo Crossman  
[kimo@webnetic.net](mailto:kimo@webnetic.net)

Alexis Thompson  
City Attorney's Office  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94103

Re: Complaint # 07094 filed by Kimo Crossman against the City Attorney's Office for alleged violation of Sections 67.21 (b) and (l) and 67.21-1 of the Sunshine Ordinance for failure to respond to a request for records, failure to provide records, and failure to post the Department Heads calendar on the website.

Based on the information provided to the Task Force from the Complainant Kimo Crossman, the Respondent Alexis Thompson and hearing public comment, the following Order of Determination is adopted:

The Sunshine Ordinance Task Force finds that the City Attorney's Office violated Sections 67.25, 67.26, and 67.29-5 of the Sunshine Ordinance for failure to respond in a timely manner, failure to keep withholding to a minimum, and failure to provided the requested daily calendar. The department is instructed to provide the responsive documents that have not been provided to Mr. Crossman within 5 days after the issuance of this Order of Determination.

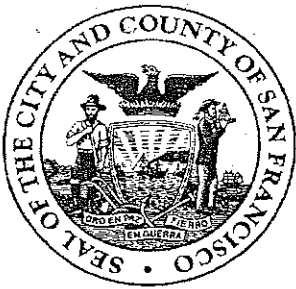
This Order of Determination was adopted by the Sunshine Ordinance Task Force on February 26, 2008 by the following vote: (Pilpel / Williams)  
Ayes: Knee, Cauthen, Chu, Comstock, Wolfe, Chan, Goldman, Williams  
Noes: Pilpel  
Excused: Craven

A handwritten signature in black ink, appearing to read "D Comstock".

Douglas Comstock, Chair  
Sunshine Ordinance Task Force

cc: Ernie Llorente, Deputy City Attorney  
Matt Dorsey, Deputy City Attorney





# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

**CONFIDENTIAL**

SUSAN J. HARRIMAN  
CHAIRPERSON

EMI GUSUKUMA  
VICE-CHAIRPERSON

EILEEN HANSEN  
COMMISSIONER

JAMIENNE S. STUDLEY  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Sent via interoffice mail

November 5, 2008

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

**Re: Ethics Complaint No. 14-080424**

Dear Mr. Darby:

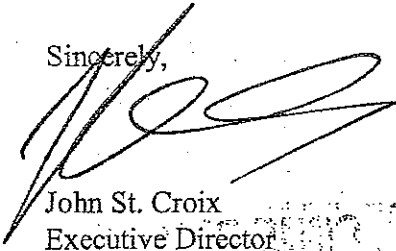
Pursuant to Section V.A.3. of the San Francisco Ethics Commission's Regulations for Investigations and Enforcement Proceedings ("the Regulations"), the Ethics Commission conducted an investigation into the above-referenced complaint, referred by the Sunshine Ordinance Task Force ("SOTF").

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read 'John St. Croix', written over the typed name.

John St. Croix  
Executive Director

01/10/2009 11:00 AM

**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

May 13, 2008

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

Regarding: #07096 complaint of Kimo Crossman and the March 10, 2008 Order of Determination from the Sunshine Ordinance Task Force against the Mayor's Office, for alleged violation of Sunshine Ordinance §§67.21 (b) and (l), and 67.21-1 for failure to keep withholding to a minimum, failure to provide the requested daily calendar, and failure to appear before the Task Force.

At their regular meeting on Tuesday, April 22, 2008, the San Francisco Sunshine Ordinance Task Force voted that the attached complaint #07096 of Kimo Crossman and the March 10, 2008 Task Force Order of Determination be referred to the Ethics Commission as well as the Board of Supervisors with a finding of willful failure to comply with the Sunshine Ordinance and failure to comply with the Order of Determination. Under the Sunshine Ordinance, those acts shall be deemed official misconduct.

This request and referral is made under Section 67.30 (c) and 67.34 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.

Complaints involving allegations of willful violations of the Sunshine 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.

The enclosed CD contains material in reference to this referral including (1) the March 10, 2008, Order of Determination, (2) the January 22, 2008, Task Force minutes, (3) the February 26, 2008, Task Force minutes (4) the April 9, 2008, Compliance and Amendments Committee minutes and (5) the draft April 22, 2008 Task Force minutes. The final minutes will be forwarded upon approval.

Ethics Commission

May 13, 2008

Page 2 of 2

If you need any further information, including tape recordings of any of the meetings referenced above, please feel free to contact me, or the Task Force Administrator at (415) 554-7724.

A handwritten signature in black ink, appearing to read "D. Comstock". The signature is fluid and cursive, with a long horizontal stroke at the end.

Doug Comstock, Chair  
Sunshine Ordinance Task Force

cc: Kimo Crossman, Complainant  
Board of Supervisors  
Joe Arellano, Mayor's Office of Communications  
Ernie Llorente, Deputy City Attorney

SUNSHINE ORDINANCE  
TASK FORCE



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. (415) 554-7724  
Fax No. 415) 554-7854  
TDD/TTY No. (415) 554-5227

**ORDER OF DETERMINATION**  
February 26, 2008

March 10, 2008

Kimo Crossman  
[kimo@webnetic.net](mailto:kimo@webnetic.net)


Nathan Ballard  
Mayor's Office  
City Hall, Room 200  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

Re: Complaint # 07096 filed by Kimo Crossman against the Mayor's Office for alleged violation of Sections 67.21 (b) and (l) and 67.21-1 of the Sunshine Ordinance for failure to respond to a request for records, failure to provide records, and failure to post the Department Head's calendar on the website.

Based on the information provided to the Task Force from the Complainant Kimo Crossman, and hearing public comment, the following Order of Determination is adopted:

The Sunshine Ordinance Task Force finds that the Mayor's Office violated Sections 67.25, 67.26, 67.29-5 and 67.21 (e) of the Sunshine Ordinance for failure to respond in a timely manner, failure to keep withholding to a minimum, and failure to provided the requested daily calendar, and failure to appear. The department is instructed to provide the responsive documents that have not been provided to Mr. Crossman within 5 days after the issuance of this Order of Determination.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on February 26, 2008 by the following vote: (Comstock / Williams)  
Ayes: Knee, Cauthen, Chu, Comstock, Wolfe, Chan, Goldman, Williams  
Noes: Pilpel  
Excused: Craven

  
Douglas Comstock, Chair  
Sunshine Ordinance Task Force

cc: Ernie Llorente, Deputy City Attorney  
Joe Arellano, Mayor's Office of Communications



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

**CONFIDENTIAL**

SUSAN J. HARRIMAN  
CHAIRPERSON

EMI GUSUKUMA  
VICE-CHAIRPERSON

EILEEN HANSEN  
COMMISSIONER

JAMIENNE S. STUDLEY  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

**Sent via Interoffice Mail**

October 31, 2008

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

**Re: Ethics Complaint No. 17-080513**

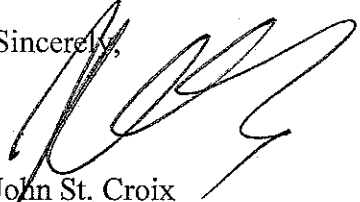
Dear Ms. Craven:

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

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

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

Sincerely,

  
John St. Croix  
Executive Director

**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**

May 13, 2008

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

Regarding: #00804, 08005 and 08007 complaint of Kimo Crossman and the March 31, 2008, Order of Determination from the Sunshine Ordinance Task Force against the City Attorney's Office and the Supervisor of Records through its representative Alexis Thompson, for alleged violation of Sunshine Ordinance §§67.1, 67.25(d), 67.26, 67.27, 67.21(a) and (b), (i), (l), 67.24(d), and 67.34 of the Sunshine Ordinance and State Government Code Sections 6253, and 6255.

At their regular meeting on Tuesday, April 22, 2008, the San Francisco Sunshine Ordinance Task Force voted that the attached complaint #00804, 08005 and 08007 of Kimo Crossman and the March 31, 2008 Task Force Order of Determination be referred to the Ethics Commission with a finding of willful failure to comply with the Sunshine Ordinance, and failure to comply with the Order of Determination. Under the Sunshine Ordinance, those acts shall be deemed official misconduct.

This request and referral is made under Section 67.30 (c) and 67.34 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.

Complaints involving allegations of willful violations of the Sunshine 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.

The enclosed CD contains material in reference to this referral including (1) March 31, 2008 Order of Determination (2) 2/26/08 Task Force minutes (3) 3/25/08 Task Force minutes (4) 4/9/08 Compliance and Amendments Committee minutes and (5) 4/22/08 draft Task Force minutes. The final minutes will be forwarded upon approval.

Ethics Commission

May 12, 2008

Page 2 of 2

If you need any further information, including tape recordings of any of the meetings referenced above, please feel free to contact me, or the Task Force Administrator at (415) 554-7724.

A handwritten signature in black ink, appearing to read 'D Comstock', written in a cursive style.

Doug Comstock, Chair  
Sunshine Ordinance Task Force

cc: Kimo Crossman, Complainant  
Joe Arellano, Mayor's Office of Communications  
Ernie Llorente, Deputy City Attorney



**SUNSHINE ORDINANCE  
TASK FORCE**



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. (415) 554-7724  
Fax No. 415) 554-7854  
TDD/TTY No. (415) 554-5227

**ORDER OF DETERMINATION**

**DATE THE DECISION ISSUED**

March 31, 2008

*KIMO CROSSMAN v. SAN FRANCISCO CITY ATTORNEY'S OFFICE AND THE  
SUPERVISOR OF RECORDS (08004, 08005, & 08007)*

**FACTS OF THE CASE**

In Complaint Number 08004 Kimo Crossman states the following:

On December 6, 2007, Kimo Crossman made an Immediate Disclosure Request ("IDR") for public records with Alexis Thompson of the City Attorney's Office. Crossman's IDR requested all communications and advice for the period of May 2007 to the present with the City Attorney's Office, regarding matters related to Open Government, public records, Sunshine Task Force privacy as described in Government Code § 67.24(b)(1)(iii) & 67.21(i). Crossman also requested 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. Crossman requested the detailed billing records related to the advice and detailed calendars of the attorneys providing the advice.

On December 7, 2007, Alexis Thompson responded and, based on Section 6253(c) of the Public Records Act and Section 67.25(b) of the Sunshine Ordinance, the CAO invoked an extension of time not to exceed 14 days to respond to the IDR.

Crossman claimed that he did not receive the records even after the extension. On 1/3/08, Crossman petitioned the Supervisor of Records from the City Attorney's Office and asked for a determination. DCA Paula Jesson responded to the request. Crossman stated that DCA Jesson's response was that he would have to wait until the City Attorney's Office completes their review of records.

In complaint number 08005, Crossman states the following:

On November 30 2007, Kimo Crossman made an Immediate Disclosure Request ("IDR") for public records with Alexis Thompson of the City Attorney's Office. Crossman's IDR requested all materials and correspondence with or about or provided to Harrison Sheppard, Task Force member. Crossman requested the attorney billing records and calendars of anyone in the CAO who has interacted with him.

On December 4, 2007, Alexis Thompson responded and based on Section 6253(c) of the Public Records Act and Section 67.25(b) of the Sunshine Ordinance, the CAO invoked an extension of time not to exceed 14 days to respond to the IDR.

### Order of Determination

Crossman claimed that he did not receive the records even after the extension. On 1/3/08, Crossman petitioned the Supervisor of Records from the City Attorney's Office and asked for a determination. DCA Paula Jesson responded to the request. Crossman stated that DCA Jesson's response was that he would have to wait until the City Attorney's Office completes their review of records.

In complaint number 08007, Kimo Crossman states the following:

On December 4, 2007, Kimo Crossman made an Immediate Disclosure Request ("IDR") for public records with Alexis Thompson of the City Attorney's Office. Crossman's IDR requested all communications and advice provided to Angela Calvillo, Clerk of the Board regarding matters related to Open Government, public records, Sunshine Task Force or privacy as described in Government Code Section 67.24(b)(1)(iii) & 67.21(i). In addition, Kimo Crossman requested the 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.

On December 6, 2007, Alexis Thompson responded and based on Section 6253(c) of the Public Records Act and Section 67.25(b) of the Sunshine Ordinance, the CAO invoked an extension of time not to exceed 14 days to respond to the IDR.

Crossman claimed that he did not receive the records even after the extension. On 1/3/08, Kimo Crossman petitioned the Supervisor of Records from the City Attorney's Office and asked for a determination. DCA Paula Jesson responded to the request. Crossman stated that DCA Jesson's response was that Kimo Crossman would have to wait until the City Attorney's Office completes their review of records.

### COMPLAINT FILED

On November 6, 2007, Crossman filed a complaint against the City Attorney's Office and on February 12, 2008 amended his complaint to include the Supervisor or Records alleging violations of Sections 67.1, 67.25(d), 67.26, 67.27, 67.21(a) and (b), (i), (l), 67.24(d), and 67.34 of the Sunshine Ordinance and State Government Code Sections 6253, and 6255.

### HEARING ON THE COMPLAINT

On March 25, 2008, Complainant Kimo Crossman appeared before the Task Force and presented his complaints, focusing on the CAO's withholding of documents and information regarding advice and information provided to the District Attorney's office on compliance with Open Government laws. Respondent Agency was represented by Alexis Thompson, who presented the Agency's defense, including citing "legal uncertainty of the validity of §67.24(b)(1)(iii)" as a basis for not releasing the requested records.

The issue in the case is whether the Agency violated Sections 67.1, 67.21, 67.22, 67.26, 67.27, 67.29-5, and/or 67.34 of the Ordinance and/or Sections 6253 and/or 6255 of the CPRA.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented, the Task Force finds the testimony of Kimo Crossman to be persuasive and finds that sections 67.21 (a) & (i), 67.24 (b)(1)(iii) are applicable in this case with respect to the alleged withholding of records and information on

**Order of Determination**

CAO's compliance with Open Government Laws applicable to the District Attorney's office. The Task Force does not find that testimony provided by the Agency persuasive to this case.

The Task Force finds that under the plain language of the Sunshine Ordinance, the advice the CAO gave to Supervisors and their agents regarding compliance with Open Government law is not exempt from disclosures. "All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records." See 67.21(i). "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." See 67.24(b)(1)(iii).

These specific statutory enactments prevail over any other applicable state law protection, including Cal. Govt. Code § 6254(k), pursuant to the terms of the Sunshine Ordinance and the California Public Records Act. See § 67.24 (providing "enhanced right of public access to information and records"); Cal. Govt. Code § 6253(e).

Moreover, the Task Force finds that the District Attorney's office, in dealing with the Open Government Issues covered by the complaint, is not engaged in the investigatory and prosecutorial functions of a district attorney governed by state law under Government Code § 23503, but is instead engaged in municipal functions governed by local law, including the Sunshine Ordinance. *Accord Rivero v. Superior Court*, 54 Cal. App. 4th 1048 (Cal. Ct. App. 1997).

**DECISION AND ORDER OF DETERMINATION**

The Task Force finds that the agency violated §§67.21 (a) & (i), 67.24 (b)(1)(iii) of the Sunshine Ordinance for failure to produce records regarding communications between the City Attorney's Office and the District Attorney under the attorney-client privilege and/or work product protection. Under the Sunshine Ordinance all such communications and information are public records not exempt from disclosure. The agency shall release the records requested within 5 days of the issuance of this Order and appear before the Compliance and Amendments Committee on April 9, 2008.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 25, 2008, by the following vote: (Craven/Knee)

Ayes: Craven, Knee, Cauthen, Comstock, Chan, Goldman, Williams

Noes: Pilpel

Absent: Wolfe

Excused: Chu



Doug Comstock, Chair  
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney  
Kimo Crossman, Complaint  
Alexis Thompson, Deputy Press Secretary

**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**

May 13, 2008

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

Regarding: #00806 complaint of Kimo Crossman and the March 31, 2008, Order of Determination from the Sunshine Ordinance Task Force against the City Attorney's Office and the Supervisor of Records through its representative Alexis Thompson, for alleged violation of Sunshine Ordinance §§67.1, 67.25(d), 67.26, 67.27, 67.21(a) and (b), (i), (l), 67.24(d), and 67.34 of the Sunshine Ordinance and State Government Code Sections 6253, and 6255.

At their regular meeting on Tuesday, April 22, 2008, the San Francisco Sunshine Ordinance Task Force voted that the attached complaint #00804, 08005 and 08007 of Kimo Crossman and the March 31, 2008 Task Force Order of Determination be referred to the Ethics Commission with a finding of willful failure to comply with the Sunshine Ordinance, and failure to comply with the Order of Determination. Under the Sunshine Ordinance, those acts shall be deemed official misconduct..

This request and referral is made under Section 67.30 (c) and 67.34 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.

Complaints involving allegations of willful violations of the Sunshine 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.

The enclosed CD contains material in reference to this referral including (1) the March 31, 2008 Order of Determination, (2) the February 12, 2008 Task Force minutes, (3) the March 25, 2008 Task Force minutes (4) the April 9, 2008 Compliance and Amendments Committee minutes and (5) the March 22, 2008 Task Force minutes. The final minutes will be forwarded upon approval.

Ethics Commission

May 13, 2008

Page 2 of 2

If you need any further information, including tape recordings of any of the meetings referenced above, please feel free to contact me, or the Task Force Administrator at (415) 554-7724.

A handwritten signature in black ink, appearing to read 'D. Comstock', written in a cursive style.

Doug Comstock, Chair  
Sunshine Ordinance Task Force

cc: Kimo Crossman, Complainant  
Nathan Ballard, Mayor's Office  
Joe Arellano, Mayor's Office of Communications  
Ernie Llorente, Deputy City Attorney

**SUNSHINE ORDINANCE  
TASK FORCE**



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1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. (415) 554-7724  
Fax No. 415) 554-7854  
TDD/TTY No. (415) 554-5227

**ORDER OF DETERMINATION**

**DATE THE DECISION ISSUED**

March 31, 2008

*KIMO CROSSMAN v. SAN FRANCISCO CITY ATTORNEY'S OFFICE AND THE  
SUPERVISOR OF RECORDS (08006)*

**FACTS OF THE CASE**

On November 30 2007, Kimo Crossman (Crossman) made an Immediate Disclosure Request ("IDR") for public records with Matt Dorsey of the City Attorney's Office. Crossman's IDR requested all materials related to a DCA Buck Delventhal meeting on 10/9/07 re: Board of Supervisors Sunshine Task Force Hearings re: Supervisor Peskin and Maxwell and any materials or communications before or after this meeting relating to the matters discussed. Kimo Crossman also requested a 15-minute phone call with DCA Delventhal to obtain oral public information.

On December 4, 2007, Alexis Thompson responded on behalf of the City Attorney's Office ("CAO") and based under Section 6253(c) of the Public Records Act and Section 67.25(b) of the Sunshine Ordinance, the CAO invoked an extension of time not to exceed 14 days to respond to the IDR.

Crossman claimed that he did not receive the records even after the extension. On 1/3/08, Crossman petitioned the Supervisor of Records from the City Attorney's Office and asked for a determination. DCA Paula Jesson responded to the request. Crossman stated that DCA Jesson's response was that Kimo Crossman would have to wait until the City Attorney's Office completes their review of records.

**COMPLAINT FILED**

On November 6, 2007, Crossman filed a complaint against City Attorney's Office and on February 12, 2008 amended his complaint to include the Supervisor or Records alleging violations of Sections 67.1, 67.25(d), 67.26, 67.27, 67.21(a) and (b), (i), (l), 67.24(d), and 67.34 of the Sunshine Ordinance and State Government Code Sections 6253, and 6255.

**HEARING ON THE COMPLAINT**

On March 25, 2008, Complainant Crossman appeared before the Task Force and presented his complaint, specifically focusing on the redaction of attorney-client privilege and/or work product materials from e-mails that were belatedly produced by the CAO and failure of Mr. Deventhal to schedule a 15 minute phone conversation under 67.22(e). Respondent Agency was represented by Alexis Thompson who presented the Agency's defense.

The issue in the case is whether the Agency violated Section(s) 67.1, 67.21, 67.22, 67.26, 67.27, 67.29-5 and/or 67.34 of the Ordinance and/or Sections 6253 and/or 6255 of the California Public Records Act.

**ORDER OF DETERMINATION****FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based on the testimony and evidence presented the Task Force finds the testimony of Kimo Crossman to be persuasive and finds that Sections 67.21 (i) and 67.24 (b)(1)(iii) to be applicable in this case with respect to the impermissible redactions being based on attorney-client privilege and work product protection. The Task Force does not find the testimony provided by the Agency persuasive to this case. The Task Force took no action regarding the alleged violation of 67.22(e).

The Task Force finds that under the plain language of the Sunshine Ordinance, the advice the CAO gave to Supervisors and their agents regarding compliance with Open Government law is not exempt from disclosures. "All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records." See 67.21(i). "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." See 67.24(b)(1)(iii).

These specific statutory enactments prevail over any other applicable state law protection, including Cal. Govt. Code § 6254(k), pursuant to the terms of the Sunshine Ordinance and the California Public Records Act. See § 67.24 (providing "enhanced right of public access to information and records"); Cal. Govt. Code § 6253(e).

**DECISION AND ORDER OF DETERMINATION**

The Task Force finds that the agency violated §§ 67.21 (i) and 67.24 (b)(1)(iii) of the Sunshine Ordinance for improperly redacting attorney-client privilege and work-product from the e-mails produced. The agency shall release the records requested without redactions within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on April 9, 2008.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 25, 2008, by the following vote: (Comstock/Goldman)

Ayes: Craven, Knee, Cauthen, Comstock, Chan, Goldman, Williams

Noes: Pilpel

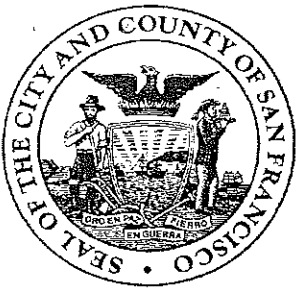
Absent: Wolfe

Excused: Chu



Doug Comstock, Chair  
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney  
Kimo Crossman, Complainant  
Alexis Thompson, Deputy Press Secretary



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Sent via interoffice mail

November 5, 2008

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

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

Dear Mr. Darby:

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

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

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

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

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

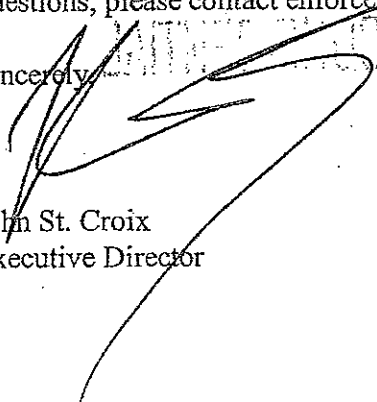
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otherwise.

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

Sincerely,



John St. Croix  
Executive Director