

SUNSHINE ORDINANCE  
TASK FORCE



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April 11, 2008

Aaron Peskin, President  
Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

**Re: Annual Report 2006 and 2007**

This is to clarify that this report is for calendar years 2006 and 2007.

It is the intent of the SOTF that this Annual Report also include a summary of the compliance problems that we continually encounter. This is a departure from the normal course, but the Task Force determined that, to fulfill our mission pursuant to §67.30(c) and, in consideration of the extreme caseload and repetitive nature of some of the complaints, a full report must include such an account. For that purpose, some incidents of 2008 are discussed.

There are also two addendum items:

- Graph showing the increase in the caseload before the Task Force
- Letter to Chief Hayes-White from our lawyer on the SOTF, Erica Craven, Esq.

The letter explains the position of the Sunshine Ordinance Task Force regarding the retention, release and redaction of employees' and officials' calendars so that the Fire Department might respond more completely, we feel that it is instructive to all departments.

If there are any questions or concerns, please contact the Administrator, Frank Darby or myself at (415) 554-7724.

Thank you for your patience,

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

Doug Comstock  
Chair, Sunshine Ordinance Task Force

Cc: Mayor Gavin Newsom  
District Attorney Kamala Harris  
City Attorney Dennis Herrera  
Ethics Commission

**SUNSHINE ORDINANCE TASK FORCE**  
**2006-2007 COMBINED ANNUAL REPORT**  
**TO THE**  
**BOARD OF SUPERVISORS**  
**CITY AND COUNTY OF SAN FRANCISCO**

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**SUMMARY**

The Sunshine Ordinance Task Force is pleased to present this Annual Report summarizing progress, activities, and findings of significance for 2007 and 2007.

In general, we find many examples of city employees and departments working diligently with the public to provide access to documents and information. In particular, our own very capable SOTF administrator, Frank Darby, was able to resolve many potential open government conflicts through mediation, conserving city resources while satisfying all parties.

2006 and 2007 were exceptionally busy years, with four conflicts carried over from 2005; thirty-five new complaints in 2006; and ninety-two new complaints in 2007. Sixty-three hearings were conducted to resolve these complaints. Hearing packets often exceeded three hundred pages, requiring an extraordinary level of commitment to open government from all members of the SOTF. Efforts are being made to streamline the packet materials circulated for the consideration of the Task Force without compromising the necessity of providing Members with the essential documentation required for their informed consideration.

The Task Force is grateful to San Francisco's community of sunshine advocates, who have raised and pursued a number of significant issues including access to officials' calendars (see addendum item #2) and website posting in native electronic format. These interested individuals have helped the Task Force advance its mandated goal of bringing greater sunshine to city government, even when, at times, their enthusiasm earned legitimate criticism.

2006 and 2007 SOTF accomplishments were challenged by unprecedented budget cuts; legal staff was cut back as a result. Deputy City Attorney Llorente continues to serve the Task Force dependably despite being part-time, providing much valued written and oral legal advice.

There are a number of persistent issues and patterns of non-compliance that continue to concern the Task Force. The Task Force has been giving these problems serious consideration, and is working diligently to formulate effective solutions through appropriate amendments to the ordinance.

We bring to your attention four issues we regard as serious enough to warrant the Board's attention and action. We recommend remedial actions for each finding below, and discuss each in detail in Section III of this document. The Task Force looks forward to discussing each issue with the Board and working with it to arrive at appropriate and effective solutions in the near future to the problems they present. You may contact the Chair through the SOTF office at 544-7724.

1.	<b>SOTF and the City Attorney's office would benefit from proactive coordination, which would decrease the workload costs of the City Attorney, the Task Force, and every city department.</b>
	The SOTF needs a process to work with the City Attorney with the goal of providing consistent, predictable advice to departments. The City Attorney has provided departments with a clear, concise Good Government Guide to help them understand their sunshine responsibilities. Major problems occur when the advice of Deputy City Attorneys conflicts with the handbook, or disagrees with the findings and rulings of the Task Force. Because department personnel rely on the advice of their assigned attorneys, they may follow that advice and still be found in violation of the Ordinance.
	ACTION: In early 2008, the SOTF Chairman will propose a meeting with the City Attorney to discuss the creation of a detailed coordinating policy and communication plan. We request representation from the President of the Board of Supervisors and the Mayor's Office.
2.	<b>Sufficient legal resources would provide the Task Force with analysis needed to rule on complex points of law.</b>
	The SOTF needs the restoration of its full-time legal counsel with the added responsibility, when requested by the Task Force, to furnish the Task Force with timely, neutral, authoritative memoranda of law on any disputed legal issue critical to a determination of a violation, and order to disclose public records, or the violation of the public meetings laws. More resources within the City Attorney's Office must be made available on an as-needed basis to the SOTF.
	ACTION: In early 2008, the SOTF Chairman will propose a meeting with the City Attorney to discuss the staffing needs of the SOTF.
3.	<b>Active communication and coordination with the Ethics Commission will create a more efficient and effective open government enforcement process.</b>
	The effective enforcement of open government laws relies on a fair, judicious process along with efficient punitive measures. The Sunshine Ordinance relies on the Ethics Commission to levy fines or other measures in response to findings of violation of the law. Unfortunately, due to ambiguities in the Ordinance, and failure to weigh factual findings made by the Task Force, the Ethics Commission has failed to enforce the Task Force's findings of willful failure to comply with the Ordinance, constituting official misconduct.

	ACTION: The Task Force intends to amend the Ordinance to provide more clarity and structure with respect to findings of willful violation and official misconduct and provide additional guidance to the Ethics Commission for enforcement referrals from the Task Force. The Task Force has and will continue to invite testimony and input from the staff of the Ethics Commission in order to increase cooperation and communication between the bodies.
4.	<b>SOTF's leadership and direction in the operational aspects of open government could provide a much-needed resource for departments resulting in compliance cost savings.</b>
	Given sufficient resources, we believe that the SOTF's administrative staff could be much-needed leaders for all aspects of open government operations, including web site archiving, process for efficiently responding to requests, and technical expertise.
	ACTION: The Executive Secretary to assist the Task Force is a helpful addition to the staff at SOTF and the Clerk of the Board, Angela Calvillo is to be commended for her attention to this problem and to the details of the acquisition. We also request that the Board authorize sufficient additional funding to enable the Task Force to design and implement a record-keeping system for administration of the Ordinance that may serve as a model to all other city agencies for systems that will further facilitate and improve compliance with Sunshine requests.

Finally, the Task Force is in the process of formulating recommendations for amendments to the Ordinance. We continue to seek input from the Board as well as every department and policy body for a workable resolution to the findings outlined via the amendment process. The Task Force has recommended four of the five sections for presentation to the Board. The updated text of the amendments is available on the SOTF website. We encourage everyone to read them and send comments to the Task Force.

### ACCOMPLISHMENTS

- ❑ The Sunshine Ordinance Task Force continued to undertake an extensive review and discussion of the Sunshine Ordinance and propose amendments in order to clarify and streamline processes.

Thirty-five complaints were filed by community members in 2006 and 101 were filed in 2007. Of the 25 Orders of Determination issued by the Task Force in 2006; 22 went to city departments and three went to commissions. In 2007, 53 Orders of Determination were issued. Of those 47 went to departments and six went to commissions.

- ❑ The SOTF administrator responded to a total of 5,948 public inquiries.

- ❑ One hundred percent of sunshine requests made to the Task Force were responded to within five days.
- ❑ Forty-two potential complaints were resolved through mediation initiated by the SOTF administrator.
- ❑ The SOTF's Deputy City Attorney provided over 228 pieces of written legal analysis on open government complaints.
- ❑ The Compliance & Amendments Committee follows up on Orders of Determination to assure compliance and reviews the ordinance for amendment by the voters. Page 20 of this report provides a thorough account of its activities.
- ❑ The Complaint Committee reviewed and focused 35 complaints in March through December 2006, and 88 complaints during 2007. Before forwarding the complaints to the Full Task Force for hearing, the Committee was able to successfully mediate a number of them, resulting in more efficient hearings overall.
- ❑ The Web site for the SOTF was redesigned to provide greater access to individuals seeking information regarding open government laws.
- ❑ The Task Force drafted Resolution number 01-06 supporting freelance Blogger/Videographer Joshua Wolf's right, as a journalists, to protect source identities and to keep possession of unpublished/unaired materials. This resolution echoed the resolution of the Board of Supervisors, and urged the Board and the Mayor to express to San Francisco's U.S. Senate and House representatives their support of Federal shield law legislation.
- ❑ Task Force Members met with several members of the press to discuss the role of journalists and Sunshine Ordinance.
- ❑ The Education, Outreach and Training Committee updated its Mission Statement and Work Program to better reflect its function and mission.

## DISCUSSION

Below we have included a detailed discussion of the concerns and related actions that we listed in the summary section. We hope this will give you a thorough understanding of the issues and concerns of the Task Force.

### **1. Proactive coordination with the City Attorney's office will decrease the workload and costs of the City Attorney, the Task Force, and every city department.**

While the Sunshine Ordinance Task Force is empowered by 67.30 (c) to "advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter ... develop appropriate goals to ensure practical and timely implementation of this chapter ... make referrals to a municipal office with enforcement power ... whenever it concludes that any person has violated any provisions of this ordinance or the Acts," many conflicts continue to occur when the City Attorney's Office

gives advice to departments that is not consistent with the precedents and rulings of the Task Force.

While the Task Force is not empowered to make laws regulating the implementation of the Ordinance, it is vested with the implementation and operation of the laws, including advising other City departments and the finding of violations.

The City Attorney, on the other hand, is tasked with advising its clients with respect to the disclosure of documents, and at the same time is required to “act to protect and secure the rights of the people of San Francisco to access public information” (67.21(i)) and is prohibited from acting “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 has had problems separating these two roles and through various means crossed the line from pure advice to active assistance to departments in denying access to public records through (1) ghost-written responses to requestors’ complaints; (2) a policy of providing oral advice on open government laws in an effort to avoid having to disclose its advice to Departments (as required by the Ordinance); (3) refusal to accept SOTF determinations on similar issues; (4) advising departments not to comply with specific orders of determination; and (5) reliance on permissive exemptions to disclosure.

The disputes and differences of opinion often stem from different interpretations of new laws or new legal precedents. They also stem from the fact that the Sunshine Ordinance provides for greater openness than the California Public Records Act (“PRA”), and the City Attorney’s office and departments tend to rely on the more restrictive PRA provisions without sufficient deference to the Ordinance and the intent of the votes in passing Proposition G in November of 2000.

A particular case in point, filed in 2006, involved a complaint against the Clerk of the Board, who, operating under the advice of the City Attorney, refused to provide or post documents on the website in their original electronic format but insisted on releasing information in a non-searchable portable document format (“PDF”) exclusively. The Task Force found the Clerk in violation of the law, particularly for violating a clear provision of the state PRA that mandated release of records in their original electronic format, and ordered the Clerk to release the requested documents in their original format. The Clerk, in an unprecedented manner, calendared the matter at the Board of Supervisors for hearing and subsequent vote by the members. The Board found the Task Force ruling was appropriate, and the Clerk subsequently released the documents in the requested format. While this process, taking individual cases to the Board of Supervisors for final adjudication when a department disagrees with a ruling from the Task Force, is a possible solution, as a precedent for future resolution, it would be an impractical burden for the Board to reconsider each of these disagreements, especially considering the acrimony often displayed in Sunshine disputes. It should be noted that the City Attorney continues to advise departments (other than the Board of Supervisors) to provide documents in PDF format, rather than the original electronic format as requested. Currently this advice is on the City Attorney website.

More generally, the Task Force has noted that the following issues have repeatedly occurred in the past two years and have led to numerous departments, officials and policy bodies being found in violation of the Ordinance(partial list):

1. Retention and recovery of deleted e-mail public records;
2. Redaction of address, phone numbers and e-mail addresses in certain public records;
3. Disclosure of public records in original electronic formats;
4. Disclosure of actual calendars used by public officials;
5. Disclosure of closed investigative files;
6. Disclosure of system back-up and security procedures;
7. Appearance of Respondents to Complaints at hearings and meetings;
8. Public disclosure of closed session information;
9. Information regarding concluded negotiations for contracts or franchises.

The SOTF needs a process to work with the City Attorney with the goal of providing consistent advice to departments on these and other matters. This will decrease the workload and costs of the Task Force and the City Attorney as well as the various Departments who are subject to the major disagreements between these two agencies. In early 2008, the SOTF Chairman will organize a meeting with the City Attorney to discuss the creation of a detailed coordinating policy and communication plan. We request representation from the President of the Board of Supervisors and the Mayor's Office with this effort.

## **2. Sufficient legal resources would provide the Task Force with analysis needed to rule on complex points of law.**

The Task Force is sometimes called on to rule on complex points of law, a problem that is exacerbated by the relatively few legal cases involving California's open government laws, and the paucity of existing cases involving the Sunshine Ordinance. The Task Force is further constrained by the requirement to rule within 45 days on an issue.

The SOTF needs the restoration of its assigned legal counsel to a full-time position with responsibility, when requested by the Task Force, to furnish the Task Force with timely, neutral, authoritative analysis on any disputed legal issue critical to its determination in a particular matter before it. The Task Force would also benefit from access to a legal counsel with meditative skills to assist the administrator in settling disputes before a hearing is required.

## **3. Active communication and coordination with the Ethics Commission will create a more efficient and effective open government enforcement process.**

The Task Force is uniquely mandated to protect the rights of citizens to access information and meetings. However, the Ethics Commission and District Attorney, to which enforcement of determinations of non-compliance are entrusted, have *never* enforced a Task Force finding of non-compliance. The District Attorney and the Attorney General have made it clear that they are not authorized to enforce the provisions of the Sunshine Ordinance, while the Ethics Commission has pointed to ambiguities in the Ordinance that makes its position unclear with respect to enforcement. The Board of Supervisors may have the resources to deal with enforcement, but there has been no clear indication of the willingness or a process to undertake such matters.

The Ethics Commission, which has not enforced any of the matters referred over the past eight years, has often come to the conclusion “Dismissed because facts did not support finding of violation.” The Task Force has no means to determine what facts were considered or how the Ethics Commission determined there was no violation.

Without a means to enforce its findings, the Task Force remains purely advisory in its capacity. The SOTF’s dependence on the Ethics Commission is a major obstacle that needs to be addressed, not only by amendments, but by the Ethics Commission as well.

**4. SOTF’s leadership and direction in the operational aspects of open government could be a much-needed resource for departments, resulting in compliance cost savings.**

The Task Force must set the example for good record keeping and website maintenance as a preliminary to finding shortcomings in the record keeping and website accessibility of departments that come under its scrutiny.

Task Force rulings and findings of violation should be easily available and accessible on its website for at least two years from occurrence. However, these cases must be organized and displayed in such a way that new employees as well as seasoned records managers would have ready access to specific issues that deal with the problems they face when presented with a record request. A user-friendly index or directory should lead the inquirer to useable and up-to-date, firsthand experience about how to perform records disclosures and an appropriate guide to the redaction of protected information as well as the response requirements for summary of records available and reference to better records that may be available. There should also be comprehensive written and stored records of Task Force meetings and Hearings, with reference to topics that would be critical to an employee tasked with fulfilling a records request. It should also include records of all correspondence in both hard copy and e-mail by Task Force Members in their official capacities located with subject matter they may illuminate. Creating such a model would no doubt be labor-intensive in the initial instance, but would result in greater ease of compliance and shorten the time required of employees seeking to fill Sunshine requests.

The availability of a knowledgeable Sunshine ombudsman would also cut the time required for departments to appropriately disclose documents, and would cut unnecessary expenses associated with compliance.

The plan to hire an Executive Secretary to assist the Task Force is proceeding in a very thoughtful manner and the new Clerk of the Board is to be commended for her attention to this problem and to the details of the acquisition. This is a very positive development, and it is clearly anticipated that a knowledgeable individual will be hired who can assist employees of every department and prevent costly complaints and revisiting poorly filled records requests.

**COMPLAINTS RECEIVED OR ADJUDICATED DURING 2006-2007**

<b>Date Received</b>	<b>Complainant</b>	<b>Department</b>	<b>Status</b>	<b>Violation</b>
3/1/2006	Anonymous (#06001)	Mayor's Office of Protocol	Complaint Committee 3/14/06; Task Force 3/28/06; (Violation)	§§67.21 and 67.25
3/3/2006	Bob Kaufman (#06002)	City Attorney's Office	Complaint Committee 3/14/06; Task Force 6/27/06 (Dismissed)	
4/26/2006	John Avalos (#06003)	Mayor's Office of Communication	Complaint Committee 5/9/06; Task Force 5/23/06; (Violation)	§§67.21 and 67.25
5/19/2006	Robert Planthold (#06004)	Municipal Transportation Agency	Complaint Committee 6/27/06; Task Force 6/27/06: (Violation); Referred to DA and Ethics Commission 9/26/06 (EC #10-061108 Dismissed)	§§67.21 and 67.25
6/14/2006	Kimo Crossman (#06005)	Mayors Office	Complaint Committee 7/11/06; Task Force 7/25/06: (Violation)	§§67.15 (a), (b), and (c)
6/23/2006	Kimo Crossman (#06006)	Telecommunications and Information Services	Complaint Committee 7/11/06; Task Force 7/25/06: (Violation)	§§67.21 and 67.25
7/7/2006	Javier Gonzalez (#06007)	City Attorney's Office	Complaint Committee 8/8/06; Task Force 8/22/06 (No Violation)	
7/7/2006	Kimo Crossman (#06008)	Telecommunications and Information Services	Complaint Committee 10/10/06; Withdrawn 9/15/06; Reactivated 9/19/06; Complaint Committee 10/10/06; Task Force 10/24/06 (Violation)	§§67.21 (l) and 67.27
7/7/2006	Kimo Crossman (#06009)	Telecommunications and Information Services	Complaint Committee 10/10/06; Withdrawn 9/15/06; Reactivated 9/19/06; Complaint Committee 10/10/06; Task Force 10/24/06 (Violation)	§§67.21 (l), and 67.27
7/7/2006	Kimo Crossman (#06010)	Telecommunications and Information Services	Reviewing Doc's from Respondent; Withdrawn 9/15/06; Reactivated 9/19/06; Complaint Committee 10/10/06; Withdrawn 9/29/06	
7/13/2006	Beth Rimbe (06011)	Office of Emergency Services and Mayors Office of Communications	Complaint Committee 8/8/06; Task Force 9/26/06 (Violation)	§§67.21, 67.24 (a), 67.25, 67.26
7/20/2006	Juan De Anda (#06012)	Public Health	Complaint Committee 9/12/06; Withdrawn 9/12/06	

<b>Date Received</b>	<b>Complainant</b>	<b>Department</b>	<b>Status</b>	<b>Violation</b>
8/17/2006	Kimo Crossman (#06013)	Office of the Clerk of the Board	Complaint Committee 9/12/06; Task Force 9/26/06 (Motion finding a violation - failed); Task Force 10/24/06 - Reconsideration (Violation)	§§67.21 (l), Cal Gov. Code 6253.9 (a)
8/17/2006	Kimo Crossman (#06014)	Telecommunications and Information Services	Complaint Committee 9/12/06; Task Force 9/26/06 - Continued, 10/24/06 (Continued); Withdrawn 11/16/06	
8/18/2006	Allen Grossman (#06015)	Office of the Clerk of the Board/Sunshine Ordinance Task Force Administrator	Complaint Committee 9/12/06; Task Force 9/26/06; Order of Determination (Violation).	§§67.21 (l), 6253.9 (a)
9/6/2006	Robert Leslie (#06016)	City Attorney's Office	Complaint Committee 10/10/06; Withdrawn 10/2/06	
9/12/2006	Michael Petrelis (#06017)	Public Health	Complaint Committee 10/10/06; Task Force 10/24/06 (Continued); Task Force 11/28/06 (Dismissed)	
9/14/2006	Daisy Anarchy (#06018/06023)	Entertainment Commission	Complaint Committee 10/10/06; Task Force 12/20/06 (Violation)	§67.15 (a)
10/26/2006	San Francisco Survival Manual for Dr. Wayne Lanier (#06019)	Mayors Office	Complaint Committee 11/14/06; Task Force 12/20/06 (Violation)	§67.21
10/27/2006	Veronica Gaynor (#06020)	Supervisor Tom Ammiano c/o Zach Tuller	Complaint Committee 11/14/06; Withdrawn 11/14/06	
10/27/2006	Steve Lawrence (#06021)	Public Utilities Commission	Complaint Committee 11/14/06; Withdrawn 11/9/06	
11/6/2006	Michael Petrelis (#06022)	Public Health	Complaint Committee 12/12/06; Task Force 1/9/07, 2/27/07 (No Violation)	
11/11/2006	Hima B. (#06023/06018)	Entertainment Commission	Complaint Committee 12/12/06; Task Force 12/20/06 (Violation)	§67.15 (a)
11/13/2006	Michael Petrelis (#06024)	Public Health	Complaint Committee 12/12/06; Task Force 1/9/07, 2/27/07 (No Violation)	
11/19/2006	Kimo Crossman (#06025)	Telecommunications and Information Services	Complaint Committee 1/9/07; Task Force 1/23/07 (Violation); CAC 5/9/07; Task Force 5/22/07: Referred to EC w/06027 & 07023 (EC #02-070801 = Dismissed)	§67.21 (b)

Date Received	Complainant	Department	Status	Violation
11/19/2006	Kimo Crossman (#06026)	Clerk of the Board of Supervisors	Complaint Committee 12/12/06; Task Force 12/20/06 (Dismissed)	
11/19/2006	Kimo Crossman (#06027)	Telecommunications and Information Services	Complaint Committee 12/12/06; Task Force 1/9/07, 1/23/07 (Violation); CAC 5/9/07; Task Force 5/22/07: Referred to EC w/06027 & 07023 (EC #02-070801 = Dismissed)	§67.24 (e)(3)
11/19/2006	Kimo Crossman (#06028)	Sunshine Ordinance Task Force Administrator	Complaint Committee 1/9/07; Task Force 1/23/07 (Withdrawn)	
11/27/2006	Kimo Crossman (#06029)	Sunshine Ordinance Task Force Administrator/Clerk of the Board of Supervisors	Complaint Committee 12/12/06; Task Force 12/20/06 (Withdrawn)	
11/27/2006	Kimo Crossman (#06030)	Clerk of the Board of Supervisors	Complaint Committee 12/12/06; Task Force 2/27/07 (Withdrawn)	
11/30/2006	Cynthia Laird (#06031)	Public Health	Complaint Committee 1/9/07; Task Force 3/27/07 (Violation)	§67.14
12/1/2006	Michael Petrelis (#06032)	Public Health	Complaint Committee 1/9/07, 2/13/07; Task Force 2/27/07 (No Violation)	
12/19/2006	Mary McGuire (#06033)	Taxi Commission	Complaint Committee 1/9/07; Task Force 1/23/07 (Violation)	§67.7
12/20/2006	Jason Grant Garza (#06034)	Public Health	Complaint Committee 1/9/07; Task Force 1/23/07 (Violation)	§67.21 (b)
12/22/2006	Kimo Crossman (#06035)	Sunshine Ordinance Task Force Administrator/Clerk of the Board of Supervisors	Complaint Committee 2/13/07; 2/27/07 (Withdrawn)	
1/4/2007	Debra Ward (07001)	Municipal Transportation Agency	Complaint Committee 2/13/07; Task Force 3/27/07 (Violation) (Withdrawn: 5/22/07)	§ 67.21
1/9/2007	Kimo Crossman (07002-A)	Mayor's Office	Complaint Committee 2/13/07; Task Force 2/27/07; 3/27/07 (Violation); 5/17/07 = Referred to EC, DA and AG [will not intervene: referred to EC]	§ 67.27

Date Received	Complainant	Department	Status	Violation
1/9/2007	Kimo Crossman (07002-B)	Mayor's Office	Complaint Committee 2/13/07; Task Force 2/27/07; 3/27/07 (Violation); 5/17/07 = Referred to EC, DA and AG [will not intervene: referred to EC]	§ 67.29-7
1/18/2007	Steven Lawrence (07003)	Public Utilities Commission	Complaint Committee 2/13/07; Task Force 2/27/07 (Withdrawn)	
1/18/2007	Steven Lawrence (07004)	Public Utilities Commission	Complaint Committee 2/13/07; Task Force 2/27/07 (Withdrawn)	
1/22/2007	Kimo Crossman (07005 & 07007)	Telecommunications and Information Services	Complaint Committee 2/13/07; Task Force 2/27/07 (Violation)	§ 67.25
1/24/2007	Kimo Crossman (07006)	Sunshine Ordinance Task Force Administrator/COB	Complaint Committee 2/13/07; Task Force 2/27/07 (Withdrawn)	
1/26/2007	Kimo Crossman (07008)	Public Utilities Commission	Complaint Committee 2/13/07; Task Force 3/27/07 (Violation); 5/22/07 (No Action Taken)	§ 67.21
2/1/2007	Kimo Crossman (07009)	Mayor's Office	Complaint Committee 3/13/07; Task Force 3/27/07 (Violation); Referred to BOS, EC, DA and AG (6/26/07)	§ 67.21
2/5/2007	Allen Grossman (07010)	City Attorney's Office	Complaint Committee 3/13/07; Task Force 3/27/07 (No Violation)	
2/15/2007	Kimo Crossman (07011)	Sheriff's	Complaint Committee 3/13/07; Task Force 3/27/07; 4/24/07; 5/22/07 (Violation); Referred to the BOS (6/5/07)	§ 67.21
2/13/2007	Dave Tognotti (07012)	Supervisor Jake McGoldrick	Complaint Committee 3/13/07; (Withdrawn 3/9/07)	
2/15/2007	Adam Aufdencamp (07013)	Mayor's Office	Complaint Committee 3/13/07; Task Force 3/27/07; 4/24/07 (Withdrawn 4/19/07)	
2/21/2007	Dorothy Kleffner (07014)	Public Health; Marin DHHS-HIV/AIDs Care Council	Complaint Committee 4/10/07; (Withdrawn 5/3/07)	
2/20/2007	Ming Lee (07015)	Dept. on the Status of Women / La Cosa De Las Madres	Complaint Committee 4/10/07; Task Force 4/24/07; 5/22/07 (Continued to the call of the Chair)	
2/26/2007	Ming Lee (07016)	Dept. on the Status of Women / Mary Elizabeth Inn	Complaint Committee 4/10/07; Task Force 4/24/07 (No Action Taken)	

Date Received	Complainant	Department	Status	Violation
3/9/2007	Anthony Faber (07017)	Western SOMA Citizens' Planning Task Force Arts & Entertainment Focus Group	Complaint Committee 4/10/07; (Withdrawn 4/10/07)	
3/8/2007	Library Users Assoc. by Exec. Dir Peter Warfield (07018)	Sunshine Ordinance Task Force Administrator/COB	Complaint Committee 4/10/07; Task Force 4/24/07 (Violation)	§§ 67.9 (e), 67.21 (h), and GC 54954.1
3/20/2007	Andrew Sisneros (07019)	Municipal Railway	Complaint Committee 4/10/07; Task Force 4/24/07 (Violation)	§ 67.21
3/20/2007	Patrick Monette-Shaw (07020)	Public Health	Complaint Committee 4/10/07; Task Force 4/24/07; 5/22/07 (Violation)	§ 67.4(a)(5)
3/25/2007	Kimo Crossman (07021)	Sunshine Ordinance Task Force Administrator/COB	Complaint Committee 4/10/07; Task Force 4/24/07; 5/22/07 (No Violation)	
3/26/2007	Kimo Crossman (07022)	City Attorney's Office	Complaint Committee 4/10/07; Task Force 4/24/07 (Withdrawn)	
3/27/2007	Kimo Crossman (07023)	Telecommunications and Information Services	Complaint Committee 4/10/07; Task Force 4/24/07; CAC 5/9/07; Task Force 5/22/07: Referred to EC w/06025 & 06027 (EC #02-070801 = Dismissed)	
3/27/2007	Library Users Assoc. by Exec. Dir Peter Warfield (07024)	Sunshine Ordinance Task Force Administrator/COB	Complaint Committee 4/10/07; Task Force 4/24/07 (Withdrawn)	
3/29/2007	John Templeton (07025)	Mayor's Office - Historic Preservation Fund Committee	Complaint Committee 5/8/07; 6/12/07; Task Force 6/26/07 (Violation)	§§ 67.4 (a) and 67.6 (e)
4/16/2007	Robert Kowal (07026)	Recreation and Parks	Complaint Committee 5/8/07; (Withdrawn 4/30/07)	
4/17/2007	Kimo Crossman (07027)	Small Business Commission	Complaint Committee 5/8/07; 5/22/07 (Withdrawn)	
4/17/2007	Dan Hirsch (07028) & Kelly Saturno (07029)	Recreation and Parks	Complaint Committee 5/8/07; 6/12/07; Task Force 6/26/07 (No Violation)	
4/24/2007	Michael Petrelis (07030)	Public Health	Complaint Committee 5/8/07; 6/12/07; Task Force 6/26/07 (Violation)	§ 67.21
4/30/2007	Patrick Monette-Shaw (07031)	Public Health	Complaint Committee 6/12/07; Task Force 6/26/07 (Violation)	§ 67.21

Date Received	Complainant	Department	Status	Violation
1/17/2007 (4/30/07)	James Chaffee (07032)	Library Commission	Complaint Committee 6/12/07 (Continued: call of the Chair)	
3/19/2007 (4/30/07)	James Chaffee (07033)	Library Commission	Complaint Committee 6/12/07 (Continued: call of the Chair)	
5/1/2007	Library Users Assoc. by Exec. Dir Peter Warfield (07034 & 07035)	Sunshine Ordinance Task Force Administrator & Clerk of the Board of Supervisors	Complaint Committee 6/12/07; Task Force 6/26/07; 7/24/07 (Withdrawn 7/17/07)	
5/1/2007	Library Users Assoc. by Exec. Dir Peter Warfield (07036)	City Attorney's Office	Complaint Committee 6/12/07; Task Force 6/26/07; 7/24/07 (Withdrawn 7/17/07)	
5/1/2007	Library Users Assoc. by Exec. Dir Peter Warfield (07037)	City Attorney's Office	Complaint Committee 6/12/07; Task Force 6/26/07; 7/24/07 (Withdrawn 7/17/07)	
5/10/2007	Anonymous Person (07038, 07043, & 07044)	Entertainment Commission	Complaint Committee 6/12/07; Task Force 8/28/07; 9/25/07; 10/23/07 (No Formal Action)	
5/21/2007	Paul Graham (07039)	Public Health	Complaint Committee 6/12/07; Task Force 6/26/07 (Violation)	§ 67.21
5/21/2007	Ahimsa Porter Sumchai (07040)	Supervisor Sophie Maxwell	Complaint Committee 6/12/07; Task Force 6/26/07 (Violation)	§ 67.15 (c) and (d)
5/23/2007	Ming Lee (07041)	Department On The Status of Women	Complaint Committee 6/12/07; Task Force 6/26/07 (No Violation)	
5/23/2007	Francisco Da Costa (07042)	Supervisor Sophie Maxwell	Complaint Committee 6/12/07; Task Force 6/26/07 (No Action Taken)	
5/27/2007	Patrick Monette- Shaw (07045)	SF Health Commission	Complaint Committee 7/10/07; Task Force 7/24/07 (No Action Taken)	
6/4/2007	Kimo Crossman (07046)	City Attorney Dennis Herrera	Complaint Committee 7/10/07; 8/14/2007; 9/11/07 (Withdrawn 9/6/07)	
6/4/2007	Kimo Crossman (07047)	Mayor Gavin Newsom	Complaint Committee 7/10/07; 8/14/2007; 9/11/07 (Withdrawn 9/6/07)	
6/4/2007	Kimo Crossman (07048)	Sheriff Michael Hennessey	Complaint Committee 7/10/07; 8/14/2007; 9/11/07 (Withdrawn 9/6/07)	
6/4/2007	Kimo Crossman (07049)	Telecommunications and Information Services - Chris Vein	Complaint Committee 7/10/07; 8/14/2007; 9/11/07 (Withdrawn 9/6/07)	
6/4/2007	Kimo Crossman (07050)	Public Utilities Commission - Susan Leal	Complaint Committee 7/10/07; 8/14/2007; 9/11/07 (Withdrawn 9/6/07)	

Date Received	Complainant	Department	Status	Violation
6/4/2007	Kimo Crossman (07051)	Clerk of the Board - Kay Gulbengay	Complaint Committee 7/10/07 (Withdrawn 7/11/07)	
6/25/2007	Allen Grossman & Wayne Lanier (07052)	District Attorney	Complaint Committee 7/10/07; 8/14/07; Task Force 8/28/07 (Violation)	§§ 67.21 & 67.27
6/26/2007	Kimo Crossman (07053)	Sheriff Michael Hennessey	Complaint Committee 8/14/07; 9/11/07 (Withdrawn 9/6/07)	
6/26/2007	Kimo Crossman (07054)	Sheriff Michael Hennessey	Complaint Committee 8/14/07; 9/11/07 (Withdrawn 9/6/07)	
7/5/2007	Kimo Crossman (07055)	District Attorney Kamela Harris	Complaint Committee 8/14/07; Task Force 8/28/07 (Violation)	§§ 67.21 & 67.21(c)
7/17/2007	Myrna Lim (07056)	Ethics Commission	Complaint Committee 8/14/07; Task Force 8/28/07; 9/25/07; 10/23/07 (Violation); 1/8/08 (Referred to AG) AG 3/21/08: Will not investigate...local matter	§ 67.21
7/23/2007	Jeff Ente (07057)	Supervisor Aaron Peskin	Complaint Committee 8/14/07; Task Force 8/28/07 (Violation); 1/8/08 (Referred to EC and AG); AG 3/24/08 (Will not investigate...Ethics matter)	§§ 67.21, 67.21(e), 67.29-1, & 67.29-7
7/24/2007	Hanley Chan (07058)	Police Department	Complaint Committee 8/14/07 (Withdrawn 8/3/07)	
7/30/2007	Paul Graham (07059)	Fire Department	Complaint Committee 8/14/07; Task Force 8/28/07 (Violation)	§§ 67.21 & 67.29-7(c)
8/23/2007	Alex Clark (07060)	Public Utilities Commission	Complaint Committee 10/9/07; Task Force 10/23/07 (No Formal Action)	
8/27/2007	Library Users Assoc. by Exec. Dir Peter Warfield (07061 & 07062)	Library	Task Force 9/25/07 (Violation); 1/8/08 (Referred to AG) AG 3/21/08: Will not investigate - local matter	§§ 67.29-2; 67.29-6; 67.21
9/7/2007	Ray Hartz (07063, 07064 & 07065)	City Attorney	Complaint Committee 10/9/07; Task Force 10/23/07 (No Formal Action)	
9/10/2007	Charles Pitts (07066)	Human Services - Central City Hospitality House	Complaint Committee 10/9/07; Task Force 10/23/07; 11/27/07 (No Jurisdiction)	
9/12/2007	Jodi Watson (07067)	Entertainment Commission	Complaint Committee 10/9/07; Task Force 10/23/07 (Violation)	§ 67.25
9/13/2007	Maxine Doogan (07068)	District Attorney	Complaint Committee 10/9/07; Task Force 10/23/07 (Violation)	§§ 67.21 & 67.25
9/17/2007	Ray Hartz (07069)	Supervisor Aaron Peskin	Complaint Committee 10/9/07; Task Force 10/23/07; 11/27/07; 1/8/08 (Violation)	§ 67.21 (e)

Date Received	Complainant	Department	Status	Violation
9/19/2007	Michael Vogl (07070)	Police Department	Complaint Committee 10/9/07 (Withdrawn 9/21/07)	
9/20/2007	Dee Modglin (07071)	Mayor's Office of Housing	Complaint Committee 10/9/07; Task Force 10/23/07 (No Violation)	
9/21/2007	Randell Evans (07072)	Redevelopment Agency & Mayor's WACAC	Complaint Committee 10/9/07; Task Force 10/23/07 (No Violation)	
9/21/2007	Russell Albano (07073)	Human Resources - Workers Comp. Div	Complaint Committee 10/9/07; Task Force 10/23/07 (Violation)	§§ 67.21 & 67.25
9/21/2007	Russell Albano (07074)	Fire Department	Complaint Committee 10/9/07; Task Force 10/23/07 (Referred to CAC with File# 07073 [No Action Taken])	
9/25/2007	Laura Carroll (07075)	Mayor's Office of Housing	Complaint Committee 11/13/07; 11/27/07 (Violation)	§ 67.21
9/25/2007	Charles Bolton (07076)	Public Works	Complaint Committee 11/13/07; 11/27/07 (Violation)	§ 67.21
10/1/2007	Allen Grossman (07077)	District Attorney	Complaint Committee 11/13/07; 11/27/07 (Violation); 1/8/08 (Referred to EC and AG); AG 3/24/08 (Will not investigate...Ethics matter)	§§ 67.21, 67.21-1; 67.25, 67.26, 67.27, CPRA 6253 and 6253.9
10/2/2007	John Chapman (07078)	Controllers Office	Complaint Committee 11/13/07; 11/27/07 (No formal action)	
10/2/2007	John Chapman (07079)	Public Utilities Commission	Complaint Committee 11/13/07; 11/27/07 (No formal action)	
10/9/2007	Dan Boreen (07080-A)	Fire Department	Complaint Committee 11/13/07; 11/27/07 (Violation); CAC 1/9/08; 2/13/08; 3/12/08 (Referral) Task Force 3/25/08: Referred to Ethics Sent 4/24/08	§§ 67.26, 67.27
10/9/2007	Dan Boreen (07080-B)	Fire Department	Complaint Committee 11/13/07; 11/27/07 (Violation); CAC 1/9/08; 2/13/08; 3/12/08 (Referral) Task Force 3/25/08: Referred to Ethics sent 4/24/08	§§ 67.26, 67.27
10/9/2007	Dan Boreen (07080-C)	Fire Department	Complaint Committee 11/13/07; 11/27/07 (Violation); CAC 1/9/08; 2/13/08; 3/12/08 (Referral) Task Force 3/25/08: Referred to Ethics Sent 4/24/08	§§ 67.25, 67.26, 67.27
10/9/2007	Dan Boreen (07080-D)	Fire Department	Complaint Committee 11/13/07; 11/27/07 (Violation)	§: 67.25

Date Received	Complainant	Department	Status	Violation
10/10/2007	Hanley Chan (07081)	Police Department	Complaint Comm. 11/13/07; 11/27/07 (No violation)	
10/10/2007	Wayne Lanier (07082)	Telecommunications and Information Services	Complaint Committee 11/13/07; 12/11/07; Task Force 1/8/08 (Violation)	§ 67.26
10/17/2007	John Darmanin (07083)	Fire Commission	Complaint Committee 11/13/07; Task Force 11/27/07; 1/22/08 (No Violation)	
10/17/2007	Marcus Santiago (07084)	City Attorney's Office	Complaint Committee 11/13/07 (Withdrawn 11/11/07)	
11/2/2007	Mr. Alvin (07085)	Grants for the Arts	Complaint Committee 12/11/07; Task Force 1/8/08; 1/22/08 (No Violation)	
11/2/2007	Hank Wilson (07086)	Police Department	Complaint Committee 12/11/07; (Withdrawn 12/4/07)	
11/2/2007	Allen Grossman (07087)	Mayor's Office	Complaint Committee 12/11/07; Task Force 1/8/08 (Violation); CAC 3/12/08 (Referral); Task Force 3/25/08 (Referred to Ethics sent 4/24/08)	§§67.21 (b) (e), 67.25 (a), CPRA Sec 6253
11/3/2007	Kimo Crossman (07088)	Assessor's Office	Complaint Committee 12/11/07; Task Force 1/8/08 (Violation); CAC 3/12/08; 4/9/08 (Referral); Task Force 4/22/08	§ §67.25 (d)
11/5/2007	Kimo Crossman (07089)	District Attorney's Office	Complaint Committee 12/11/07; Task Force 1/8/08 (Violation)	§§ 67.24 (b) (iii), 67.26, 67.27
11/5/2007	Kimo Crossman (07090)	SFMTA Agency, SFMTA Commission and City Attorney's Office	Complaint Committee 12/11/07; Task Force 1/8/08 (Violation)	§ 67.24 (a) (2)
11/14/2007	Ahimsa Porter Sumchai (07091)	Supervisor Sophie Maxwell	Complaint Committee 12/11/07; Task Force 1/8/08 (Violation)	§§ 67.15 (a), 67.21 (e)
11/18/2007	Patrick Monette-Shaw (07092)	Board of Supervisors and Human Resources	Complaint Committee 12/11/07; Task Force 1/8/08; 1/22/08; 2/26/08 (Violation)	§67.10 (e) (1)
11/27/2007	Patrick Monk (07093)	Supervisor Sophie Maxwell	Complaint Comm./Task Force 1/8/08; Task Force 1/22/08 (Violation)	§§67.15 (e), 67.21 (e)

Date Received	Complainant	Department	Status	Violation
11/29/2007	Kimo Crossman (07094)	City Attorney	Complaint Committee/Task Force 1/8/08; Task Force 1/22/08; 2/26/08 (Violation); CAC 3/12/08 (Referral); Task Force 3/25/08: Referred to Ethics sent 4/24/08	§§ 67.25, 67.26, 67.29-5
11/29/2007	Kimo Crossman (07095)	City Attorney	Complaint Committee/Task Force 1/8/08; Task Force 1/22/08 (Withdrawn 1/18/08)	
11/29/2007	Kimo Crossman (07096)	Mayor's Office	Complaint Committee/Task Force 1/8/08; Task Force 1/22/08; 2/26/08 (Violation); CAC 4/9/08 (Referral) Task Force 4/22/08	§§ 67.25, 67.26, 67.29-5
11/29/2007	Steve Lawrence (07097)	Public Utilities Commission	Complaint Committee/Task Force 1/8/08; Task Force 1/22/08 (Violation); CAC 2/13/08 (No further action)	§ 67.25

## AUTHORITY

### Administrative Code Sections 67

#### 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)

#### 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)

## **SOTF ORGANIZATION & COMMITTEE STRUCTURE**

The Chair of the Task Force appoints committee chairs and its members. Each member of the Task Force must also be a member of a committee.

Ad Hoc Committees are appointed as needed. There have been several Ad Hoc Committee meetings to deal with suggested Sunshine Ordinance provisions for the City College Board, access to public meetings and public records at the San Francisco Community College District, and the San Francisco Unified School District's proposed Open Government Policy.

The Task Force has four Standing Committees:

- **Complaint Committee:** The committee monitors the complaint process and makes recommendations to the Task Force regarding how the complaints should be handled. If the efforts of the Administrator and the Deputy City Attorney fail to obtain the information to which a complainant is legally entitled, the matter will be referred to the Complaint Committee for a hearing to determine whether the Task Force has jurisdiction over the complaint, and to clarify the complaint. If jurisdiction is found, a Task Force hearing will be held at which time the complainant and the respondent will present the merits of their respective cases. See § VII, Addendum # 2 for a copy of the

complaint form.

Members of the Complaint Committee in 2006-2007 were: Sue Cauthen (Chair), Kristin Chu, Nicholas Goldman, and Bruce Wolfe.

- **Compliance & Amendments Committee:** This Committee was appointed in 2002. This Committee monitors compliance with the Orders of Determinations adopted by the Task Force and recommends to the Task Force amendments to the Sunshine Ordinance regarding enforcement of the Orders of Determination. The Committee also considers recommendations, amendments, and changes to the Sunshine Ordinance as provided by members of the Task Force, City departments, and the general public.

The Compliance and Amendments Committee held follow-up hearings to track compliance or non-compliance with Orders of Determination issued by the Task Force and, where necessary, sent items back to the Task Force with a recommendation that they be referred to the Ethics Commission, the District Attorney, the Board of Supervisors or the California Attorney General for investigation and appropriate action. In some cases, the Committee alerted respondent entities to the need for clear, written guidelines on responding to public records requests, or for clear, equitable policies on public comment during meetings of City bodies.

In addition, the Committee continued its review of the Sunshine Ordinance with the goal of placing a package of reforms before city voters. As this Annual Report is being drafted, the target date for a ballot initiative is November, 2008.

Some issues remain outstanding:

- Certain entities, relying on advice from the City Attorney's Office, are failing to comply with Orders of Determination directing them to make records available to requesters; or to provide electronic records in their native format when requested to do so.
- Certain entities are refusing to discuss Sunshine-related advice from the City Attorney's Office or to identify who provided said advice, even though such information must, under law, be disclosed upon request.
- Certain entities continually violate Section 67.21(e) of the Sunshine Ordinance by failing to send knowledgeable representatives to meetings of the Task Force or its committees to discuss cases in which they are the respondent. On some occasions, an entity sends a representative who has insufficient knowledge of the matter at hand; on other occasions, an entity sends no representative

Members of the Compliance and Amendments Committee in 2006-2007 were: Richard Knee (Chair), Erica Craven, and Doug Comstock.

- **Education, Outreach, and Training Committee:** Unless the public is aware of its right of access to information and participation, the value of the ordinance would be minimal. Therefore, the Education, Outreach and Training Committee was created to

provide outreach and publicity to the media, to the general public, and to oversee the preparation and publication of information.

Members of the Education, Outreach, and Training Committee in 2006-2007 were: David Pilpel (Chair), Bruce Wolfe, and Marjorie Williams.

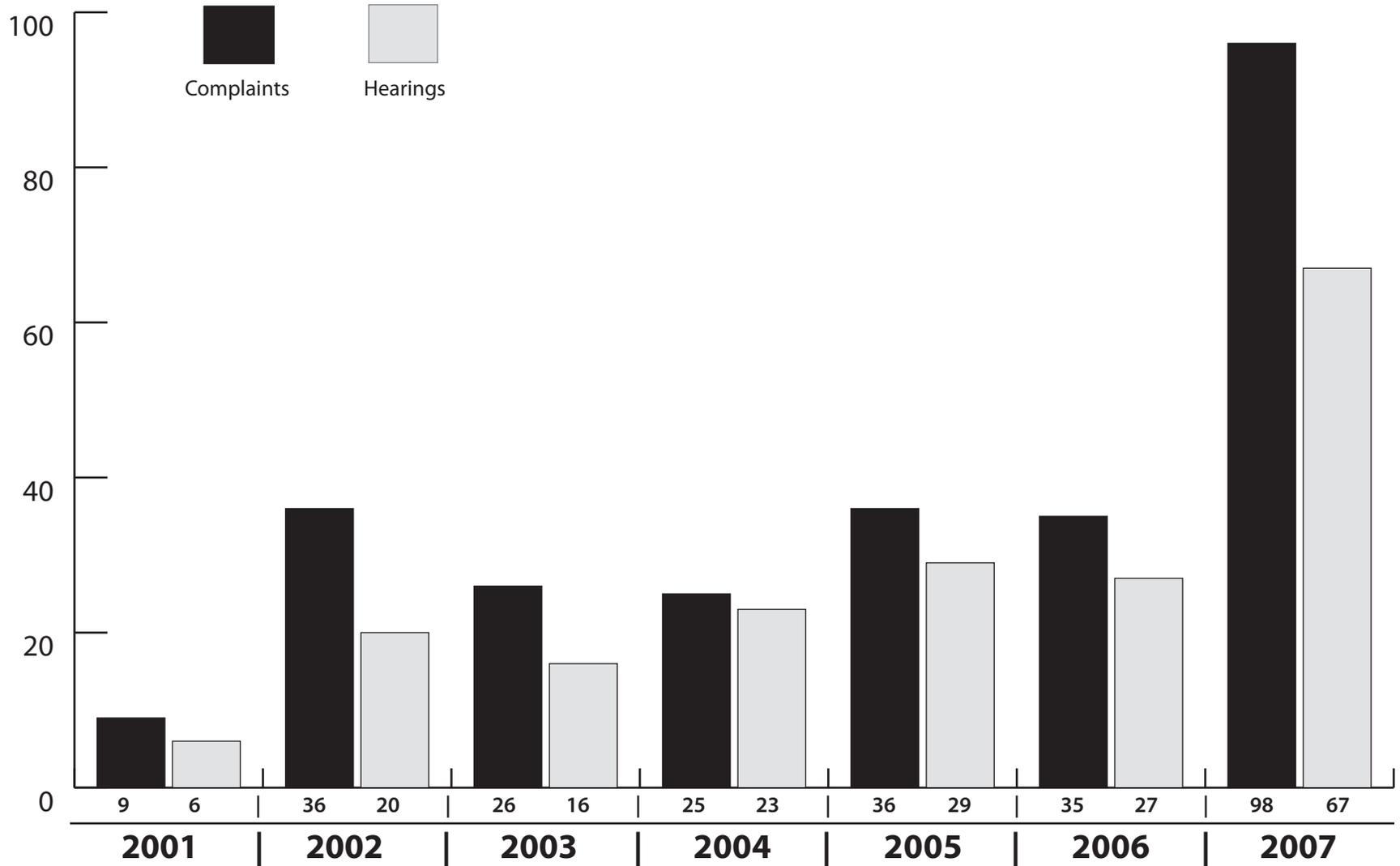
- **Rules Committee:** This committee was established to review matters related to amendments to the Task Force by-laws and procedures so the Task Force's work could proceed in an orderly manner. The committee also helps to ensure that all annual objectives enumerated in the Sunshine Ordinance are met by the Task Force. As with all committees, recommendations for action are made to the full Task Force for final action.

Members of The Rules Committee in 2006-2007 were: Bruce Wolfe (Chair), Hanley Chan, and Doug Comstock.

## **ADDENDA**

1. Graphic representation of Task Force workload
2. Letter regarding calendar retention, release, and redaction
3. Membership of Task Force
4. Complaint Form and Overview of Procedures
5. Sunshine Ordinance Task Force Web Page Contents

# Sunshine Ordinance Task Force Complaints and Hearings



**SUNSHINE ORDINANCE  
TASK FORCE**



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

February 8, 2008

Chief Hayes-White  
San Francisco Fire Department  
698 2<sup>nd</sup> Street  
San Francisco, CA 94107

I write in response to a request, made at the Sunshine Ordinance Task Force's Compliance and Amendments Committee's December 12, 2007 meeting, that the Committee express in writing the Committee's concerns about the retention, release and redaction of employees' and officials' calendars so that the Department can better respond. With apologies for the delay, I respectfully submit the following analysis.

**Calendars in General.**

Employees and *most* city officials are not required to keep a calendar under open government laws. However, to the extent they do – any calendar used by a city employee or official for city business (under the definitions of both the California Public Records Act (“PRA”) and the Sunshine Ordinance) is a public record that is subject to release. This does not mean that all information on every city employees' or officials' calendar must be released. Consistent with prior Orders of Determination made by the Task Force, appropriate and narrow redactions may be made, for example, for security concerns or information that is of a purely personal and private nature (*e.g.*, medical appointments, information about children and spouses).

Pursuant to section 67.29-5 of the Sunshine Ordinance:

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.

This requirement is often referred to as the “Prop. G” calendar by the City Attorneys’ office and by officials. Officials who are covered by 67.29-5 are, therefore, required to keep a calendar that contains a certain *minimum* of information. This requirement establishes a *floor* of required information to be maintained and released within three business days. This requirement, however, does not mean that any *other* information maintained on an official’s calendar is automatically exempt from disclosure. To the contrary, as described above, all calendars are public records and all information that is not specifically exempt under an express exemption must be released under the normal release provisions of the Ordinance.

For information that is expressly exempt from disclosure and subsequently redacted from calendars that are released for public review, the Department must explain to the requestor (by use of footnotes or other detailed and clear explanation) why each piece of information redacted has been withheld. *See, e.g.*, section 67.26. This can often be accomplished by redacting and adding notes to a hard copy document before it is released. Providing a detailed explanation of why each piece of information has been redacted (*i.e.*, personal privacy, security) often obviates any unwarranted “suspicion” a Sunshine requestor may have when provided with a calendar with numerous, unclear or unexplained redactions.

### **Employee Discipline**

At the Compliance and Amendments hearing there was also some discussion concerning when and whether it would be appropriate to redact the names of employees meeting with officials. Examples were given of potential whistleblowers who have a need for confidentiality and employees who were subject to complaints and potential discipline. With respect to whistleblowers or other for whom there is a demonstrated need for confidentiality, the Task Force has ruled that those names may be withheld.

With respect to meetings that involve discussing complaints and discipline, the Department indicated it was relying on section 67.24c(7) of the Ordinance which provides that the following employee records must be released:

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.

Therefore, not surprisingly, the Department felt that employees whose misconduct had not been confirmed should not be released. However, since this provision of the

Ordinance was adopted and passed, the California Court of Appeal has confirmed a different standard for release of information regarding complaints and potential employee misconduct. Specifically:

Where complaints of a public employee's wrongdoing and resulting disciplinary investigation reveal allegations of a substantial nature, as distinct from baseless or trivial, and there is reasonable cause to believe the complaint is well founded, public employee privacy must give way to the public's right to know.

*Bakersfield City School Dist. v. Superior Court*, 118 Cal. App. 4th 1041, 1046 (Cal. Ct. App. 2004). The Bakersfield court confirmed that neither "a finding of the truth of the complaint contained in the personnel records or the imposition of employee discipline is a prerequisite to disclosure." *Id.*

As the Sunshine Ordinance specifically provides that Departments must follow laws (or legal opinions) that provide for greater access to public information, *see* section 67.36, the Bakersfield decision must be applied when determining whether the Department will release names of employees who have been the subject of complaints and potential disciplinary hearings.

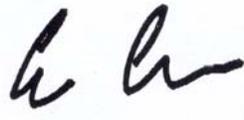
### **Employee Vacation**

The last point discussed at the Committee meeting was the appropriateness of redacting the names of employees who were out on vacation. Based on the recent California Supreme Court decision, *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court*, 42 Cal. 4th 319 (Cal. 2007), public employees do not have a reasonable expectation of privacy regarding the accrual and use of vacation time. As demonstrated by numerous news articles regarding overtime and vacation accrual and use by public employees, the public also has a significant and strong right to know when public employees are on and off the job.

I believe I have covered each of the areas that were discussed in the Compliance and Amendments Committee discussion. Please let me know if you have any questions or concerns. In closing, I'd like to express our appreciation for the Fire Department's continued efforts to respond to Sunshine Requests with a considered and thoughtful approach and for continuing to send knowledgeable representatives – including yourself and Deputy Chief Massetani – to respond to our questions and concerns.

Chief Joanne Hayes-White  
February 7, 2008  
Page 4 of 4

Regards,

A handwritten signature in black ink, appearing to read "Erica L. Craven". The signature is written in a cursive style with a large initial "E" and "L".

Erica L. Craven

c: Rhab Boughn  
Ernie Llorente  
Sunshine Ordinance Task Force

**SUNSHINE ORDINANCE TASK FORCE  
MEMBERS DURING 2006-2007  
(Terms expire 4/27)**

Seat 1	Submitted by the local chapter of the Society of Professional Journalists and be an attorney. Appt 8/25/04.	Erica L. Craven Term ends 4/08 District 8
Seat 2	Submitted by the local chapter of the Society of Professional Journalists and be a journalist. Appt 5/3/02	Richard Knee Term ends 4/08 District 3
Seat 3	Member of the press or electronic media with an interest in citizen access. Appt 5/3/02	Sue Cauthen Term ends 4/08 District 3
Seat 4	Appointed from names submitted by New California Media now know as New America Media; be a journalist from a racial/ethnic-minority-owned news organization. Appt 4/1/06, resigned February 13, 2007.	Pueng Vongs Term ends 4/07 District 1
Seat 5	Submitted by the League of Women Voters. Appt 5/23/06.	Kristin Chu Term ends 4/08 District 1
Seat 6	Experienced in consumer advocacy. Appt 5/3/02; re-appointed 4/15/04: continues to serve as a holdover.	Doug Comstock Term ended 4/06 District 5
Seat 7	Experienced in consumer advocacy. Appt 4/15/04.	David Pilpel Term ends 4/08 District 4
Seat 8	Demonstrated interest in or has experience in the issues of citizen access and participation in local government. Appt 6/2/05.	Bruce Wolfe Term ends 4/08 District 5
Seat 9	Demonstrated interest in or has experience in the issues of citizen access and participation in local government. Appt 4/1/06.	Hanley Chan Term ends 4/08 District 3
Seat 10	Demonstrated interest in or has experience in the issues of citizen access and participation in local government. Appt 6/2/05 (AKA Nick Mueller).	Nick Goldman Term ends 4/08 District 8
Seat 11	Demonstrated interest in or has experience in the issues of citizen access and participation in local government. Appt 5/25/01; re-appointed 5/9/03; re-appointed 6/2/05; continues to serve as a holdover.	Marjorie A. Williams Term ends 4/07 District 10
Ex- Officio	Clerk of the Board or her designee (non-voting): Gloria Young served as an ex-officio member from 1/06 to 4/07	Angela Calvillo Begin 7/07
Ex- Officio	Mayor or his designee (non-voting) Appt 4/22/07	Harrison Sheppard Term ends 8/22/09 District 5



## SUNSHINE ORDINANCE TASK FORCE

1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102

Tel. (415) 554-7724; Fax (415) 554-7854

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

Thank you for your interest in the implementation of the San Francisco Sunshine Ordinance.

The Sunshine Ordinance adopted by the citizens of the City & County of San Francisco declares that:

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

The role of the Sunshine Ordinance Task Force is to advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement the Ordinance. The Task Force is responsible for developing appropriate goals to ensure the practical and timely implementation of the Ordinance and to report to the Board on practical or policy problems encountered in the administration of the Ordinance.

If you have encountered problems regarding compliance with the Ordinance, the Public Records Act or the Ralph M. Brown (Public Meetings) Act, we ask that you fill out the attached complaint form. Please deliver the form to Frank Darby, Administrator of the Sunshine Ordinance Task Force, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4683.

We attempt to resolve complaints informally where possible, through the affected departments and the City Attorney's office. Matters that cannot be adequately resolved, or matters that involve substantial policy considerations, may be set for hearing at a Task Force meeting. The Task Force meets the fourth Tuesday of each month at 4:00 p.m. at City Hall, Room 408.

**Notice: Personal information that you provide is subject to disclosure under the California Public Records Act and the Sunshine Ordinance, except when confidentiality is specifically requested. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).**



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**SUNSHINE ORDINANCE COMPLAINT**

Complaint against which Department or Commission \_\_\_\_\_

Name of individual contacted at Department or Commission \_\_\_\_\_

- Alleged violation public records access
- Alleged violation of public meeting. Date of meeting \_\_\_\_\_

Sunshine Ordinance Section(s) \_\_\_\_\_  
*(If known, please cite specific provision(s) being violated)*

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Do you wish a public hearing before the Sunshine Ordinance Task Force?  yes  no

(Optional)<sup>1</sup>  
Name \_\_\_\_\_ Address \_\_\_\_\_

Telephone No. \_\_\_\_\_ E-Mail Address \_\_\_\_\_

Date \_\_\_\_\_  
Signature \_\_\_\_\_

<sup>1</sup> NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE IS SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. COMPLAINANTS CAN BE ANONYMOUS AS LONG AS THE COMPLAINANT PROVIDES A RELIABLE MEANS OF CONTACT WITH THE SOTF (PHONE NUMBER, FAX NUMBER, OR E-MAIL ADDRESS).



## Filing a Complaint with the Sunshine Ordinance Task Force

1. You may fill out a Complaint Form online or access a form at [sfgov.org/site/sunshine](http://sfgov.org/site/sunshine), or you may send your own letter filing a formal complaint. File the complaint with the Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Pl., Room 244, San Francisco CA 94102-4689, or you may send it by fax to (415) 554 7854 or e-mail to [sotf@sfgov.org](mailto:sotf@sfgov.org).
2. Once your complaint is received, the Complaint Committee of the Sunshine Ordinance Task Force reviews the complaint to determine if the Sunshine Ordinance Task Force has jurisdiction.
  - Jurisdiction is defined as those items the Task Force may address as outlined in the Sunshine Ordinance
3. Once the Complaint Committee completes its consideration, the complainant is notified of the Committee's decision.
4. If the Complaint Committee finds no jurisdiction over the alleged violations in the complaint, the complainant could request reconsideration before the full Task Force at its next scheduled meeting. Should the full Task Force find jurisdiction, a full hearing on the merits would be scheduled.
5. If the Complaint Committee finds the Task Force has jurisdiction, the complainant, respondent, and the Task Force Members are notified in writing of the jurisdiction decision, and the specific matters, which the Complaint Committee has found jurisdiction.
6. The complaint is then scheduled for a hearing before the next meeting of the Sunshine Ordinance Task Force.
7. If additional information is to be submitted from the complainant or respondent, the additional material must be submitted to the Sunshine Ordinance Task Force Administrator at least seven days before the scheduled hearing before the Task Force.
  - (a.) If the complainant submits any additional material after the seven day deadline, the complainant will be informed that:
    - The Task Force may proceed without considering the new material, or
    - The complainant may waive the 45-day time line set and continue the hearing to the next Task Force meeting (the question to be the matter on which the Complaint Committee has granted jurisdiction), or
    - The complainant may withdraw the complaint and file a new complaint to be considered by the Complaint Committee, or
    - The complainant may proceed to hearing with their current complaint and file a new complaint and use the new information to support the freestanding separate complaint.
8. After the Task Force completes its public hearing, the Task Force would make an Order of Determination regarding the complaint.
9. For further information, contact the Sunshine Ordinance Task Force Administrator, Frank Darby at (415) 554 7724.

## **SUNSHINE ORDINANCE TASK FORCE**

### **WEB SITE INFORMATION**

In 2006-2007 the Sunshine Ordinance Task Force web page received 880,306 hits. The web page consists of:

- Current agendas and minutes
- Meeting notices
- Past years' agendas and minutes
- Public records listing and retention schedule
- By-laws of the Task Force
- Other related documents and information

Information on:

- The Sunshine Ordinance
- Membership of the Task Force
- Committee structure of the Task Force
- Non-profit requirements (Administrative Code, Chapter 12L)
- Duties and responsibilities of the Task Force
- Complaint Procedures and Form
- Frequently asked questions