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ALLEN GROSSMAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

ALLEN GROSSMAN, an individual,

Petitioner,

v.

JOHN ST. CROIX, EXECUTIVE DIRECTOR,
SAN FRANCISCO ETHICS COMMISSION;
and SAN FRANCISCO ETHICS
COMMISSION,

Respondents.

Case No. CGC

**VERIFIED PETITION FOR WRIT OF
MANDATE**

Government Code §§ 6250 *et seq.*; San
Francisco Administrative Code §§ 67.21 *et
seq.*; Code of Civil Procedure §§ 526, 1060
and 1085.

INTRODUCTION

1
2 1. Petitioner Allen Grossman (“Petitioner”) hereby petitions this Court to issue a
3 peremptory writ of mandate directing the San Francisco Ethics Commission (the “Ethics
4 Commission”) and John St. Croix (“St. Croix”), its Executive Director, to produce to Petitioner
5 all withheld public records properly requested by Petitioner on October 3, 2012. This Petition is
6 made pursuant to the California Public Records Act, Government Code section 6250 *et seq.* (the
7 “CPRA”); the San Francisco Sunshine Ordinance, San Francisco Administrative Code sections
8 67.21 *et seq.* (the “Sunshine Ordinance”); and Code of Civil Procedure sections 526, 1060 and
9 1085.

JURISDICTION AND VENUE

10
11 2. The writ of mandate and other relief sought by Petitioner hereunder are
12 authorized by Government Code sections 6258 and 6259 and by Sections 67.21(f), 67.35(a) and
13 67.35(d) of the Sunshine Ordinance. The withheld public records, or some part of them, are
14 located within San Francisco; the Ethics Commission is an agency of, and its Executive
15 Director an employee and public official of, the City and County of San Francisco (the “City”);
16 and Petitioner’s request was made, and his claims for access arose as a result of the actions and
17 refusals to act of the Ethics Commission and its Executive Director, within San Francisco.
18 Therefore, venue in this Court is proper.

PARTIES

19
20 3. Petitioner is now and was at all times mentioned in this Petition, an adult resident
21 of San Francisco.

22 4. The Ethics Commission is organized under Article XV of the Charter of San
23 Francisco City and County (“Charter”) and is a local agency within the meaning of Section
24 6252(b) of the CPRA. The Ethics Commission consists of five members (“Ethics
25 Commissioners”). (Charter §15.100.) The Ethics Commissioners appoint an Executive
26 Director, who serves as the commission’s chief executive. (Charter §15.101.) Respondent John
27 St. Croix (“St. Croix”) is, and all times relevant to the public records request that is the subject
28 of this action has been, the Executive Director of the Ethics Commission.

1 **FACTUAL BACKGROUND**

2 *The Sunshine Ordinance and Ethics Commission Regulations*

3 5. Pursuant to CPRA section 6253(e), the voters of San Francisco enacted the
4 Sunshine Ordinance in November 1999; it went into effect in January 2000. The Sunshine
5 Ordinance enhances San Franciscans' rights of access to public records and public meetings. It
6 also established a Sunshine Ordinance Task Force to implement and carry out certain aspects of
7 the law and the CPRA.

8 6. In addition to its substantive provisions, the Sunshine Ordinance also sets out the
9 process for enforcement of that law within San Francisco government. The Ethics Commission
10 plays a critical role in that enforcement regime. For example, the Sunshine Ordinance
11 specifically authorizes persons to enforce that law by instituting proceedings "before the Ethics
12 Commission if enforcement action is not taken by a city or state official 40 days after a
13 complaint is filed." (San Francisco Administrative Code §67.35(d).) It also instructs that
14 "[c]omplaints involving allegations of willful violations of this ordinance, the Brown Act or the
15 Public Records Act by elected officials or department heads of the City and County of San
16 Francisco shall be handled by the Ethics Commission." (*Id.*, §67.34.)

17 7. Further, because the Sunshine Ordinance Task Force has no independent
18 enforcement power, the Sunshine Ordinance provides that the Sunshine Ordinance Task Force
19 "shall make referrals to a municipal office with enforcement power under this ordinance ...
20 whenever it concludes that any person has violated any provisions of this ordinance or the
21 Acts." The Ethics Commission is one such office, and is specifically delegated with the power
22 to enforce willful violations of the Sunshine Ordinance. (San Francisco Administrative Code
23 §67.35(d).) . In addition, the 1996 voter-adopted City Charter authorizes the Ethics
24 Commission to adopt "rules and regulations relating to carrying out the purposes and provisions
25 of ordinances regarding open meetings and public records." (Charter, §15.102)

26 8. Despite that important voter-mandated role, the Ethics Commission has failed to
27 enforce the Sunshine Ordinance. Since 2004, when the Sunshine Ordinance Task Force first
28 referred a failure by a City respondent to comply with its order to disclose public records, it has

1 referred some 39 cases to the Ethics Commission for enforcement. In each instance known to
2 Petitioner, the Ethics Commission declined to enforce the Order and dismissed the case.
3 Petitioner and other Sunshine Ordinance advocates have long criticized that lack of action by
4 the Ethics Commission, as has a San Francisco civil grand jury in its 2010–11 report, “San
5 Francisco’s Ethics Commission: The Sleeping Watch Dog.”

6 9. A major point of contention was the Ethics Commission’s reliance on inapposite
7 regulations in its investigation and enforcement of Sunshine Ordinance Task Force referrals.
8 From 2000, when the Sunshine Ordinance became effective, until January 2013, the Ethics
9 Commission had no specific regulations setting out the procedures for enforcement of Sunshine
10 Ordinance Task Force referrals. Instead, the Ethics Commission took the position that
11 previously adopted regulations (“Ethics Commission Regulations for Investigations and
12 Enforcement Proceedings”) governing other types of investigations should also be applied to
13 Sunshine Ordinance Task Force referrals. Those regulations, however, were adopted under a
14 Charter provision for Ethics Commission investigations and enforcements “relating to campaign
15 finance, lobbying, conflicts of interest and governmental ethics.” Charter section 15.102 and
16 Appendix C, section C3.699-13. Petitioner and others argued to the Ethics Commission that
17 those regulations did not govern its Sunshine Ordinance enforcement actions, and that the
18 Ethics Commission needed new separate regulations tailored to the investigation and
19 enforcement of Sunshine Ordinance actions, including Sunshine Ordinance Task Force
20 referrals.

21 10. In 2009, the Ethics Commission recognized the need for Sunshine Ordinance-
22 specific regulations, and its staff began the process of drafting new regulations governing (a) the
23 enforcement of Sunshine Ordinance Task Force referrals and (b) complaints filed directly with
24 the Ethics Commission regarding willful violations of the Sunshine Ordinance.

25 11. The development of those regulations extended over three years and in the end,
26 new regulations were not put in place until January 2013. The first drafts of the new regulations
27 proposed by the Ethics Commission’s staff merely would have modified the existing Ethics
28 Commission Regulations for Investigations and Enforcement Proceedings to accommodate

1 Sunshine Ordinance matters. Later, when it became evident that modification would not be
2 workable, the Ethics Commission took a different approach and its staff began drafting stand-
3 alone regulations, which, in their final form, were called “Ethics Commission Regulations for
4 Violations of the Sunshine Ordinance.”

5 12. For most of that long process, the Ethics Commission staff shared drafts of the
6 new regulations with the Sunshine Ordinance Task Force, which provided comment and
7 suggestions prior to or in connection with consideration of the draft by the Ethics Commission
8 itself. There were also three joint meetings of the Ethics Commission and members of the
9 Sunshine Ordinance Task Force Committee with responsibility for reviewing the proposed
10 regulations. That collaboration provided the Ethics Commission access to the expertise of the
11 Sunshine Ordinance Task Force, and allowed the Sunshine Ordinance Task Force input into the
12 implementation of the Ethics Commissions’ important role in enforcement of Sunshine
13 Ordinance.

14 13. In late 2012, for unknown reasons, that changed. On September 14, 2012,
15 without prior notice to the Sunshine Ordinance Task Force or its members, the Ethics
16 Commission published notice that its staff had submitted another revised draft of the proposed
17 regulations for consideration at the Ethics Commission’s September 24, 2012 meeting. The
18 lack of prior notice deprived the Sunshine Ordinance Task Force of the opportunity to provide
19 input to the Ethics Commission or its staff. Moreover, because the Sunshine Ordinance Task
20 Force did not have a scheduled meeting before the Ethics Commission was set to consider the
21 proposed regulations, it was prevented from taking official action to review or comment on
22 them .

23 14. Petitioner and other advocates appeared at the Ethics Commission’s September
24 24, 2012 meeting and objected to the Sunshine Ordinance Task Force’s exclusion from the
25 process, without avail.

26 *Petitioner’s Record Request*

27 15. In an effort to seek further information about the Ethics Commission’s proposed
28 draft for its September 2012 meeting and its failure to provide that draft to the Sunshine

Ordinance Task Force for review, on October 3, 2012, Petitioner submitted to St. Croix, in his capacity as Executive Director of the Ethics Commission, a public records request pursuant to the CPRA and Sunshine Ordinance seeking copies of certain public records relating to Ethics Commission's draft regulations. Specifically, Petitioner requested:

[C]opies of any and all public records ... in the custody or control of, maintained by or available to you, the Ethics Commission (Commission), any staff member or any Commissioner in connection with or with reference to:

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

(2) the preparation, review, revision and distribution of all prior drafts and final versions of the Draft Regulations and Staff Report

A true and correct copy of Petitioner's request is attached hereto as Exhibit A.

16. On October 12, 2012, Steven Massey, the Ethics Commission's Information Technology Officer ("Massey") responded to Petitioner's request on behalf of St. Croix. He produced 123 electronic files, six of which were partially redacted. However, he informed Petitioner that copies of additional records were being withheld:

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

The withheld public records were not identified in any way, including by category. The response included no information about the number of documents withheld. A true and correct copy of Massey's response is attached as Exhibit B.

17. The statutory sections cited in Massey's letter define the attorney-client privilege (Evidence Code sections 952 and 954), and the attorney work-product protection (Code of Civil Procedure section 2018.030). The CPRA provision cited, Government Code section 6254(k), is not a privilege or exemption in itself but incorporates into the CPRA exceptions privileges, such as the above two, set out elsewhere in state or federal law.

1 18. On October 21, 2012, Petitioner responded by letter to Massey, challenging the
2 Ethics Commission's blanket assertion of privilege in support of its refusal to produce the
3 withheld records. A true and correct copy of Petitioner's October 21, 2012 response to Massey
4 is attached as Exhibit C. The letter states, in part:

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

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

14 19. Petitioner's response also cited specific authority from the Sunshine Ordinance
15 governing the records sought in his request, namely, section 67.24. Section 67.24(b)(1)(ii)
16 applies to records, like the draft regulations, draft staff reports, and related records requested by
17 Petitioner, and clarifies that they cannot be subjected to a retroactive assertion of privilege if
18 they were not privileged at the time they were created or received. Section 67.24(b)(1)(iii)
19 prohibits the assertion of privilege in response to a public records request for any "advice on
20 compliance with" or "***any communication otherwise concerning***" (emphasis added) the
21 governmental ethics code or the Sunshine Ordinance—the express subject of the records
22 requested. Taken together, those two subsections make clear that no privilege may be asserted
23 with respect to the type of records requested by Petitioner.

24 20. Having received no response to his October 21 letter, Petitioner sent an email to
25 Massey on November 1, 2012 requesting attention to his previous inquiry:

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

1 response.

2 A true and correct copy of Petitioner's November 1, 2012 email to Massey is attached as
3 Exhibit D.

4 21. On November 2, 2012, St. Croix answered Petitioner's email to Massey as
5 follows:

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

9 A true and correct copy of St. Croix's November 2, 2012 email to Petitioner is attached as
10 Exhibit E.

11 *Petitioner's Complaint and the Sunshine Ordinance Task Force Order*

12 22. Faced with St. Croix's refusal to produce the requested public records, or to
13 provide the required written justification for his assertion of privilege, Petitioner filed a
14 complaint against St. Croix with the Sunshine Ordinance Task Force on November 19, 2012. A
15 true and correct copy of the complaint is attached as Exhibit E.

16 23. St. Croix responded to the Complaint by letter dated December 6, 2012, a true
17 and correct copy of which is attached as Exhibit F. In that response, St. Croix again claimed the
18 attorney-client privilege and attorney work-product protection, and asserted that his bare
19 citation to the code sections setting out those privileges was sufficient to satisfy compliance
20 with the Sunshine Ordinance's requirements for a written justification for any withholding.

21 24. The letter also stated that the Ethics Commission was not withholding any
22 documents on the basis of Sunshine Ordinance subsections 67.24(b)(1)(i) and (ii):

23
24 In responding to all public record requests, staff thoroughly reviews the
25 Ethics Commission's files to ensure that we identify all records that are
26 responsive to the request. This review includes a review for any
documents subject to disclosure under Sunshine Ordinance subsections
67.24(b)(1)(i) and (ii). Mr. Grossman appears to have made an assumption
27 that documents subject to disclosure under these subsections were
withheld. That is not the case.

28 25. However, St. Croix's response to the complaint did not address Petitioner's

1 contention that any withholding was improper under Sunshine Ordinance subsection
2 67.24(b)(1)(iii) , the subsection prohibiting the assertion of privilege in response to any public
3 records request for any “advice on compliance with” or “any communication otherwise
4 concerning” the governmental ethics code or the Sunshine Ordinance—again, the express
5 subject of Petitioner’s request.

6 26. The Sunshine Ordinance Task Force conducted an extended hearing on the
7 complaint at its June 5, 2013 public meeting. Both Petitioner and St. Croix appeared, spoke and
8 responded to questions from Task Force members. Approximately one hour was devoted to the
9 complaint.

10 27. St. Croix testified that he did not know the number of records withheld, that he
11 did not personally review them, and that he could not testify regarding which of those claimed
12 exemptions would apply to any or which withheld record. As a result, neither Petitioner nor the
13 Sunshine Ordinance Task Force members were provided with any description of the withheld
14 records or the basis on which St. Croix asserted that the claimed exemptions applied to them.

15 28. In its written Order of Determination dated June 24, 2013, the Sunshine
16 Ordinance Task Force held that St. Croix violated sections 67.21(b) and 67.24(b)(1) of the
17 Sunshine Ordinance by improperly withholding records subject to disclosure, and ordered him
18 to produce them to Petitioner. A true and correct copy of the Task Force’s Order of
19 Determination dated June 24, 2013 is attached as Exhibit H.

20 29. To date, St. Croix has not complied with that order.

21 30. Though St. Croix has never identified, by category or otherwise, the withheld
22 records, those withheld records likely include those falling within at least the following
23 categories: (a) all substantive correspondence between the Ethics Commission staff and the
24 Deputy City Attorneys regularly assigned to the Ethics Commission; (b) substantive
25 communications to or with Ethics Commission members concerning the draft regulations; (c)
26 any internal memoranda or other records discussing changes made in the September 2012
27 revisions to the regulations and the reasons for those changes, (d) any records showing which
28 Ethics Committee staff members participated in the drafting and reviewing of the various drafts

of the proposed regulations and the staff report prepared in connection with each draft.

31. During the pendency of this dispute, at its November 2012 meeting, the Ethics Commission adopted the Ethics Commission Regulations for Violations of the Sunshine Ordinance. The regulations took effect January 25, 2013.

GOVERNING LAW

The Constitutional Mandate for Broad Access to Public Records

32. California State Proposition 59, approved in 2004 by more than eighty-three percent of the voters, added subdivisions (b) through (e), to Section 3 of Article 1 of the California Constitution. Subdivision (b)(1) created a new constitutional right of access to information concerning the conduct of the people's business:

The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

33. Subdivision (b)(2) requires that any law be construed broadly to provide for public access to such information:

A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

The CPRA

34. The CPRA was enacted in 1968. Its express purpose was to enhance the openness of public records, access to which it declared a "fundamental and necessary right":

In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

Gov't Code §6250.

35. "Public records" are broadly defined under the CPRA to include "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Gov't

Code § 6252(d).

36. Section 6253(b) of the CPRA requires disclosure of non-exempt public records upon request:

Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

Gov't Code §6253(b).

37. The CPRA also sets strict time limits for responses to such requests and specification of the reasons for any denial:

Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor.

Gov't Code § 6253(c). Gov't Code § 6253(d) requires disclosure of the person responsible for any denial of a public records request.

38. The law provides for enforcement by petition to the superior court:

(a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public.

Gov't Code §6259.

The San Francisco Sunshine Ordinance

39. The Sunshine Ordinance declares:

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

1 *allowing the business of government to be conducted in secret, and those*
2 *circumstances should be carefully and narrowly defined to prevent public*
3 *officials from abusing their authority.*

4 San Francisco Administrative Code section 67.1 (emphasis added).

5 40. The Sunshine Ordinance also broadens access to public records by prohibiting
6 San Francisco departments from asserting certain exceptions that might otherwise be available
7 under the CPRA:

8 Notwithstanding a department's legal discretion to withhold certain
9 information under the California Public Records Act, the following
10 policies shall govern specific types of documents and information and
11 shall provide enhanced rights of public access to information and records
12 ...

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

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

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

22 San Francisco Administrative Code § 67.24. Most importantly here, a responding department
23 may *not* refuse to produce any “advice on compliance with” the San Francisco governmental
24 ethics code or the Sunshine Ordinance, or “*any communications*” otherwise concerning those
25 laws. Id. §67.24(b)(1)(iii).

26 41. Under the Sunshine Ordinance, a party responding to a public records request
27 party must provide a written justification for any exemption asserted as the basis for non-
28 disclosure of a public record. San Francisco Admin. Code §67.20(b). The Sunshine Ordinance
mandates the detail required in such a disclosure:

Any withholding of information shall be justified, in writing, as follows:

(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.

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

1 (c) A withholding on the basis that disclosure would incur civil or criminal
2 liability shall cite any specific statutory or case law, or any other public
agency's litigation experience, supporting that position.

3 San Francisco Administrative Code §67.27.

4 42. The Sunshine Ordinance Task Force is an independent administrative body
5 tasked with carrying out express duties and powers under the Sunshine Ordinance. It has eleven
6 voting members appointed by the Board of Supervisors. All eleven members must have
7 experience or a demonstrated interest in the issues of citizen access and participation in local
8 government.

9 43. One of the Task Force's duties is to determine whether a public record requested
10 by a member of the public is disclosable. Under section 67.21(e) of the Sunshine Ordinance, if
11 a custodian of a public record refuses, fails to comply, or incompletely complies with a public
12 records request, upon the petition of the person making the request, the Task Force (a) must
13 make a determination as to whether the record requested, or any part of it, is public, and, if does
14 so, is (b) to immediately order the custodian of the public record to comply with the request. An
15 authorized knowledgeable representative of the custodian of the public records requested is
16 obligated to attend any hearing and explain the basis for its decision to withhold the records
17 requested. San Francisco Administrative Code section 67.21(e) (*see also*, Sunshine Ordinance
18 Task Force Public Complaint Procedure, ¶B.4.)

19 44. Though the Sunshine Ordinance Task Force lacks independent enforcement
20 authority, the Sunshine Ordinance provides that if the custodian refuses or fails to comply with
21 an order of the Sunshine Ordinance Task Force order within five days, it is to notify the district
22 attorney or the attorney general for enforcement proceedings (San Francisco Administrative
23 Code § 67.21(e)). In addition, the law states:

24 The Task Force shall make referrals to a municipal office with
25 enforcement power under this ordinance or under the California Public
26 Records Act and the Brown Act whenever it concludes that any person has
violated any provisions of this ordinance or the Acts.

27 San Francisco Administrative Code §67.30(c).
28

45. The Sunshine Ordinance expressly provides that it may be enforce by means of a writ of mandate by “any person”:

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

San Francisco Administrative Code §67.35(a).

46. Specifically, the Sunshine Ordinance confers jurisdiction on this Court to hear this petition and order compliance with the request:

If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the superior court shall have jurisdiction to order compliance.

San Francisco Administrative Code §67.21(f).

47. In any judicial enforcement proceeding, the Sunshine Ordinance expressly places the burden of proof on the custodian of records to prove any claimed exemption:

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

San Francisco Administrative Code § 67.21(g).

FIRST CAUSE OF ACTION
WRIT OF MANDATE FOR DISCLOSURE OF PUBLIC RECORDS

(CPRA §6259 and Sunshine Ordinance §§67.21(f), 67.35(a))

48. Petitioner hereby incorporates by reference every allegation set forth above.

49. Petitioner made a proper and effective request for public records under both the CPRA and Sunshine Ordinance.

50. The records requested were public records, the disclosure of which was legally required.

51. None of the records requested were exempt from disclosure under governing law. Under San Francisco Administrative Code subsections 67.24(b)(1)(ii) and (iii), any privilege or work-product protection that might otherwise apply to the requested documents

1 does not apply.

2 52. St. Croix and the Ethics Commission failed to comply with their obligation to
3 produce such records under the CPRA and Sunshine Ordinance, and otherwise to comply with
4 their obligations in connection with their response to Petitioner's request under those laws.

5 53. Specifically, respondents violated Government Code sections 6253(b), 6253(c),
6 6253(d) and 6253.1(a) and San Francisco Administrative Code sections 67.21(b) and (c),
7 67.24(b)(1) (ii) and (iii), (g) (h) and (i).

8 54. The lack of compliance includes not just respondents' failure to produce the
9 requested public records, but their failure to respond in a timely manner, to provide information
10 about the persons responsible for the denial, and to provide the requisite justification for the
11 refusal. In particular, respondents' failure to provide any information about categories of
12 documents being withheld, the applicability of various asserted privileges to those categories, or
13 the basis for the assertion of privilege, constituted a violation of law.

14 55. Moreover, respondent St. Croix has refused to comply with the lawful order of
15 the Sunshine Ordinance Task Force.

16 56. Respondents had a nondiscretionary ministerial duty to comply with Petitioner's
17 request, and to provide copies of the withheld records to Petitioner.

18 57. Their failure to do so is correctible by the issuance of the writ of mandate by this
19 Court compelling compliance.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Petitioner prays for relief as follows:

22 1. That the Court issue in the first instance a peremptory writ of mandate directing
23 Respondents to immediately deliver to the Petitioner copies of all remaining public records
24 requested in his October 3, 2012 request;

25 2. In the alternative, that the Court issue an alternative writ of mandate ordering
26 Respondents to show cause why such an order should not be issued;

27 3. That Petitioner be awarded his costs and attorneys fees pursuant to Government
28 Code section 6259(d), San Francisco Administrative Code section 67.35(b), Code of Civil

1 Procedure section 1021.5, and California Rules of Court Rule 3.37; and

2 4. For costs of this proceeding, and

3 5. For such other and further relief as the Court deems just and proper.

4
5 DATED: September 17, 2013

KERR & WAGSTAFFE LLP

6
7 By: _____

MICHAEL NG

8 Attorneys for Petitioner

9 ALLEN GROSSMAN

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VERIFICATION

I, Allen Grossman, am the petitioner in this proceeding. I have read the foregoing petition and know its contents. The facts stated herein are true and are within my personal knowledge, except those statements made on information and believe and with respect to those I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this petition and declaration were executed on this 17th day of September, 2013, at San Francisco, California.

Allen Grossman