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2 JUDY ALEXANDER, CA BAR NO. 116515  
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8 Attorneys for Petitioner  
9 ALLEN GROSSMAN

ENDORSED FILED  
SUPERIOR COURT  
COUNTY OF SAN FRANCISCO

OCT - 5 2009

GORDON PARK-LI, Clerk  
BY: PARAM NATT  
Deputy Clerk

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

ALLEN GROSSMAN,

Petitioner,

vs.

SAN FRANCISCO ETHICS COMMISSION,  
JOHN ST. CROIX, AS EXECUTIVE DIRECTOR  
OF THE SAN FRANCISCO ETHICS  
COMMISSION, AND RICHARD MO, AS CHIEF  
ENFORCEMENT OFFICER OF THE SAN  
FRANCISCO ETHICS COMMISSION,

Respondents.

Case No. **CPF-09-509868**

Petition Filed: October 5, 2009

Trial Date: Not set

**VERIFIED PETITION FOR PEREMPTORY  
WRIT OF MANDATE**

Date: November 10, 2009

Time: 9:30 a.m.

Dept.: TBD 302

Judge: TBD

COMES NOW PETITIONER ALLEN GROSSMAN AND DECLARES AS FOLLOWS:

1. Petitioner, Allen Grossman ("Petitioner"), is now and was at all times mentioned in this  
Petition, an adult resident of the City and County of San Francisco ("City"). He owns the residence  
he occupies in the City and pays real estate taxes to the City on that residence.

2. Respondent San Francisco Ethics Commission ("Commission") is a body duly organized  
and established under Article XV of the Charter of San Francisco City and County ("Charter").

3. The Commission is a local agency within the meaning of Section 6252(a) of the California  
Public Records Act ("CPRA") (Govt. Code §§6250 et seq.) and is a custodian of public records  
("Custodian") as defined in Article III, Section 67.21 of the San Francisco Sunshine Ordinance

1 (“Ordinance”). (Added by Ord. 265-93, app. 8/18/93; amended by Proposition G, 11/2/99.) As a  
2 local agency under the CPRA, the Commission has a mandatory duty to comply with and follow all  
3 provisions of the CPRA, and as a Custodian under the Ordinance, the Commission has a mandatory  
4 duty to comply with the Ordinance.

5 4. Respondent John St. Croix (“Mr. St. Croix”) is the duly appointed, and currently is, and at  
6 all times mentioned in this Petition was, the Executive Director of the Commission. Respondent  
7 Richard Mo (“Mr. Mo”) is the duly appointed, and currently is, and at all times mentioned in this  
8 Petition was, the Chief Enforcement Officer of the Commission.

9 5. Under the Ordinance, (a) if a Custodian refuses, fails to comply, or incompletely complies  
10 with a public records request, upon the petition of the person making the request, the Sunshine  
11 Ordinance Task Force established by the Ordinance (“Task Force”) (Ordinance, Article IV,  
12 §67.30(a)) must determine whether the record requested, or any part of it, is public, and (b) if the  
13 Task Force determines that the record is public, it must immediately order the custodian of the  
14 public record to comply with the request. An authorized representative of the custodian of the  
15 public records requested must attend any Task Force hearing regarding the contested request and  
16 explain the basis for its decision to withhold the records requested. (Ordinance, Article III,  
17 §67.21(e).)

18 6. If the Task Force concludes that any Custodian has violated any provision of the Ordinance  
19 or the CPRA relating to the public’s access to public records, it must refer the matter to a municipal  
20 office with enforcement power under the Sunshine Ordinance or under the CPRA. (Ordinance,  
21 Article VI, §67.30(c).) The Commission has such enforcement power. (Ordinance, Article IV,  
22 §67.35(d).)

23 **PETITIONER’S FIRST REQUEST**

24 7. In or about September 2008 Petitioner obtained a copy of a letter sent by Mr. Mo to Erica  
25 Craven, Chair of the Task Force. The letter informed Ms. Craven that three matters referred by the  
26 Task Force to the Commission for enforcement had been dismissed, because the Commission  
27 determined there was insufficient evidence to find that a violation of the Ordinance had occurred.  
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1 (Matters referred by the Task Force to the Commission for enforcement are hereafter referred to as  
2 “Enforcement Matters.”) A copy of Mr. Mo’s letter to Ms. Craven is attached as Exhibit A.

3 8. On October 1, 2008, Petitioner filed an Immediate Disclosure Request pursuant to  
4 Section 67.25(a) of the Ordinance with Mr. Mo, requesting copies of certain public records in the  
5 custody of the Commission relating to the three Enforcement Matters referenced in Mr. Mo’s letter  
6 to Ms. Craven and dismissed by the Commission. A copy of Petitioner’s First Request is attached as  
7 Exhibit B.

8 9. By letter dated October 2, 2008, Mr. Mo declined to provide any of the records requested  
9 in Petitioner’s First Request, claiming that the records are required to be kept confidential under  
10 Section C3.699-13(a), Appendix C of the Charter and one of several CPRA exemptions, including  
11 the deliberative process privilege and the official information privilege. A copy of Mr. Mo’s  
12 October 2, 2008 letter is attached as Exhibit C.

### 13 **PETITIONER’S SECOND REQUEST**

14 10. On February 23, 2009 Petitioner asked Mr. St. Croix by facsimile (“Petitioner’s Second  
15 Request”) to have all documents in custody of the Commission related to two additional  
16 Enforcement Matters ready for inspection and copying by Petitioner at the Commission’s offices  
17 after 1:00 PM the next day, February 24, 2009. A copy of the Petitioner’s Second Request is  
18 attached as Exhibit D.

19 11. On the afternoon on February 24, 2009, when Petitioner arrived at the Commission’s  
20 offices to inspect the records requested in the Petitioner’s Second Request, Petitioner was informed  
21 that Mr. St. Croix was not in the office and no one in the office was aware of Petitioner’s advance  
22 notice regarding the inspection. Eventually, after being shown a copy of Petitioner’s faxed  
23 notification, Mr. Mo told Petitioner that he would not allow any inspection until Mr. Mo had  
24 reviewed the records related to the two matters and determined whether any of those records were  
25 disclosable. Mr. Mo refused to conduct such review while Petitioner waited. Petitioner agreed to  
26 return the next day to inspect the public records at issue, if Mr. Mo would agree to prepare a list that  
27 (i) identified any public records being withheld, and (ii) cited the specific exemption(s) on which the  
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1 Commission based its denial of access to those public records. Mr. Mo agreed.

2 12. On February 25, 2009, Petitioner returned to the Commission's offices. He was denied  
3 access to all public records related to the two matters referenced in the Petitioner's Second Request,  
4 except for the Task Force records transmitted to the Commission with the Task Force's referral  
5 letters seeking enforcement. For each public record found by the Commission to be non-disclosable,  
6 the Commission claimed the same three exemptions: Sections 6254(k) and 6255 of the CPRA and  
7 California Evidence Code Section 1040. Copies of the non-disclosable logs provided to Petitioner  
8 by the Commission are attached as Exhibits E and F.

9 13. Petitioner sent three letters to Commission staff regarding one of the matters referenced in  
10 Petitioner's Second Request—two letters to Mr. St. Croix, dated February 29, 2008 and May 5,  
11 2008, and one letter to Mr. Garrett Chatfield, the staff - lawyer investigator assigned to that matter,  
12 dated March 7, 2008. Copies of these letters are attached as Exhibits G, H and I. Notably, none of  
13 these letters appear on the non-disclosable log provided to Petitioner for that matter (see Exhibit E).

14 **PETITIONER'S THIRD REQUEST**

15 14. On March 6, 2009, Petitioner delivered to Mr. St. Croix by facsimile a public records  
16 request pursuant to Section 67.21(b) of the Sunshine Ordinance and Section 6253(b) of the CPRA  
17 ("Petitioner's Third Request") seeking certain public records relating to Enforcement Referrals for  
18 the period January 1, 2006 through December 31, 2009, inclusive. A copy of Petitioner's Third  
19 Request is attached as Exhibit J.

20 15. When Mr. St. Croix failed to acknowledge receipt of Petitioner's Third Request or respond  
21 within the 10-day period mandated under Section 6253(c) of the CPRA and Section 67.21(b) of the  
22 Sunshine Ordinance for such response, Petitioner, on March 19, 2009, sent an email to Mr. St. Croix  
23 notifying him that compliance with Petitioner's Third Request was overdue. A copy of Petitioner's  
24 March 19, 2009 email to Mr. St. Croix is attached as Exhibit K.

25 16. To date, neither Mr. St. Croix nor any one else from the Commission has responded in any  
26 way to Petitioner's Third Request.

27 17. Respondents' refusal to provide access to the records requested in Petitioner's First,  
28

1 Second and Third Requests (collectively, the "Requested Records") violates Petitioner's rights under  
2 the Ordinance and the CPRA and constitutes willful violation of both. Respondents have a non-  
3 discretionary ministerial duty to provide to Petitioner copies of all the Requested Records.

4 18. Petitioner is a party beneficially interested in the outcome of these proceedings and has a  
5 clear, present and substantial right to the relief sought herein.

6 19. Petitioner has no plain, speedy and adequate remedy other than by the relief sought herein.

7 WHEREFORE, Petitioner requests that:

8 (a) After a hearing on this matter, the Court issue a peremptory writ of mandate commanding  
9 Respondents to provide to Petitioner copies of the Requested Records;

10 (c) Petitioner be awarded his costs and attorney's fees as required by Section 6259(b) of the  
11 CPRA and Section 67.35(b) of the Sunshine Ordinance; and

12 (d) For such other and further relief as this court deems just and proper.

13  
14 Dated: September 30, 2009

15 NIXON PEABODY LLP

16  
17 By 

18 Gregory P. O'Hara  
19 Judy Alexander  
20 Attorneys for Petitioner

21 ALLEN GROSSMAN

**VERIFICATION**

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I, Allen Grossman, declare as follows:

1. I am the Petitioner in the above-captioned action.
2. I have read the foregoing VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE and know the contents thereof, and I certify that the same are true of my own knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Palo Alto, California on October 1, 2009.

  
\_\_\_\_\_  
Allen Grossman

# **EXHIBIT A**



## ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

SUSAN J. HARRIMAN  
CHAIRPERSON

July 24, 2008

EMI GUSUKUMA  
VICE-CHAIRPERSON

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

EILEEN HANSEN  
COMMISSIONER

JAMIEENNE S. STUDLEY  
COMMISSIONER

**Re: Ethics Complaint Nos. 04-070801, 01-070525, 05-070808**

CHARLES L. WARD  
COMMISSIONER

Dear Chairperson Craven:

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Pursuant to Section V.A.3. of the San Francisco Ethics Commission's Regulations for Investigations and Enforcement Proceedings ("the Regulations"), the Ethics Commission conducted an investigation into the above-referenced complaint (SOTF complaint numbers 07002(a), 07002(b), and 07009).

The Commission has determined that there is insufficient evidence to find that a violation of the Sunshine Ordinance occurred. For this reason, the Ethics Commission has dismissed this matter. Pursuant to the Regulations, no further action is contemplated in regard to this complaint. If you have any questions regarding this matter, please call (415) 252-3100.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Mo".

Richard Mo  
Chief Enforcement Officer

# **EXHIBIT B**

## IMMEDIATE DISCLOSURE REQUEST VIA FACSIMILE

**To:** Mr. Richard Mo, Chief Enforcement Officer  
San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102-6053

**Date:** October 1, 2008

**Name of Requester:** Allen Grossman  
**Requester Address:** 111 30<sup>th</sup> Avenue  
**City/State/Zip:** San Francisco, CA 94121-1005  
**Telephone:** 415-831-3720 (Number to be called to clarify request)  
**Email:** grossman356@mac.com

This is an IMMEDIATE DISCLOSURE REQUEST (pursuant to Section 67.25(a) of the San Francisco Sunshine Ordinance) under the applicable provisions of California Public Records Act and the San Francisco Sunshine Ordinance for copies of any public records in the custody or control of or maintained by the Ethics Commission (Commission), its Executive Director, any staff member (including you) or any Commissioner relating or with respect to, or in connection with the Commission's dismissal of the three "complaints" identified in your July 24, 2008 letter to "Erica Craven, Chair", SOTF (Dismissal Letter), a copy of which is attached to this request, including, without limitation, any agenda, transcripts, memoranda, reports, findings, minutes, emails or other correspondence or communications to, from or among any one or more of (a) the Commission, its Executive Director, any staff member (including you) or any Commissioner, (b) the Office of the Mayor or (c) any other person with reference to:

- (1) The statements in the Dismissal Letter that:

"The Commission has determined that there is insufficient evidence to find that a violation of the Sunshine Ordinance occurred. For this reason the Ethics Commission has dismissed this matter. Pursuant to the Regulations no further action is contemplated in regard to this complaint."

- (2) The requirement in Section V. A of the Commission's Regulations for Investigations and Enforcement Proceedings (Commission Regulations) that the Executive Director inform the Commission of his determination, which provides:

**"A. At the conclusion of the investigation, if the Executive Director determines that there is not probable cause to believe that a violation of state or local law relating to campaign finance, lobbying, campaign consulting, conflicts of interest, or governmental ethics has occurred, the Executive Director shall inform the Commission of that determination and provide clear and concise reasons supporting that determination. Thereafter any two or more members of the Commission may cause the item to be calendared for consideration by the full Commission in a closed session at the next Commission meeting held no sooner than 10 days after the date the Executive Director informs the Commission of**

the Executive Director's determination. Commissioner's requests that a complaint be calendared for consideration by the full Commission must be received by the Executive Director not less than 5 days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements." (Emphasis Added)

3. The Dismissal Letter, including all drafts, notes or other records related to it.

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

Your attention is called to Section 3 of the Commission's By-Laws that provide, in part:

"The Commission shall comply with all applicable laws, including, but not limited to, ...the San Francisco Sunshine Ordinance (Administrative Code sections 67.01 et seq.)..."

Your attention is also called to the following provisions of the San Francisco Sunshine Ordinance:

Section 67.24(b)(1), which provides:

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

- (i) A pre-litigation claim against the City;
- (ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;
- (iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance."

Section 67.24(b) (2), which provides:

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

Section 67.21 (k), which provides:

"Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government

Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.”

This public records request is to be read broadly and any exemptions to disclosure of any public information in such public records are to be construed narrowly. In accordance with Section 67.25(a) of the Sunshine Ordinance, please reply no later than Thursday October 2, 2008.

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Allen Grossman

# EXHIBIT C



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

SUSAN J. HARRIMAN  
CHAIRPERSON

EMI GUSUKUMA  
VICE-CHAIRPERSON

EILEEN HANSEN  
COMMISSIONER

JAMIENNE S. STUDLEY  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

*Sent via electronic mail*

October 2, 2008

Allen Grossman  
111 30<sup>th</sup> Avenue  
San Francisco, California 94121

Re: Immediate Disclosure Request

Dear Mr. Grossman:

This letter is in response to your Immediate Disclosure Request of October 1, 2008. Under the San Francisco Charter, the Ethics Commission may not disclose records related to its investigations to the extent that such records would be exempt from disclosure under the California Public Records Act. *See* S.F. Charter § C3.699-13(a) ("Records of any investigation shall be considered confidential information to the extent permitted by state law.") Several Public Records Act exemptions apply to the records sought by your request including, but not limited to, the deliberative process privilege and the official information privilege. *See* Gov't Code §§ 6254(k), 6255; Evid. Code § 1040.

For the foregoing reasons, the Ethics Commission has withheld two documents that may not be provided in response to your request.

If you have any questions, please call me at (415) 252-3100.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard Mo".

Richard Mo  
Chief Enforcement Officer

# **EXHIBIT D**

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

**FACSIMILE TRANSMITTAL**

**To:** John St. Croix, Executive Director  
**Of:** San Francisco Ethics Commission  
**FAX Number:** (415) 252 - 3112  
**Phone Number:** (415) 252 - 3100  
**Number of Pages:** Cover sheet only.  
**Date:** February 23, 2009  
**From:** Allen Grossman  
**Re:** Ethics Commission files numbered EC #05-080204 (SOTF #07077) and EC # 15-080424 (SOTF #07087).  
**Message:** Please have these two complete files, including any logs related to them, and records in either that are in electronic format, available for my inspection and copying at your offices sometime after 1:00 PM tomorrow (Tuesday, February 24, 2009). Both these files relate to referrals from the SOTF that originated with complaints that I filed with the SOTF.

Your attention is called to Sections 67.21(a) and 6721(l) of the San Francisco Sunshine Ordinance and Sections 6253 and 6253.9 of the California Public Records Act.

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

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

# **EXHIBIT E**

05-080204 Non-Disclosable Log

<u>Date</u>	<u>Description</u>	<u># of pages</u>	<u>Non-Disclosable</u>
8/29/2008	Memo fr/John St. Croix to Ethics Commission	5	Gov't Code §§ 6254(k), 6255; Evid. Code § 1040
10/30/2008	Memo fr/John St. Croix to Erica Craven	1	Gov't Code §§ 6254(k), 6255; Evid. Code § 1040
10/30/2008	Memo fr/John St. Croix to Deputy District Attorney Paul Henderson	1	Gov't Code §§ 6254(k), 6255; Evid. Code § 1040
12/12/2007	Memo fr/Deputy D. A. Paul Henderson to John St. Croix	1	Gov't Code §§ 6254(k), 6255; Evid. Code § 1040
2/5/2008	Memo fr/Garrett Chatfield to A.D.A. Marc Katz & D.C.A. Andrew Shen	1	Gov't Code §§ 6254(k), 6255; Evid. Code § 1040
2/14/2008	Memo fr/D. C.A. Andrew Shen to John St. Croix	1	Gov't Code §§ 6254(k), 6255; Evid. Code § 1040
N/A	Legal research	17	Gov't Code §§ 6254(k), 6255; Evid. Code § 1040
N/A	Legal research	12	Gov't Code §§ 6254(k), 6255; Evid. Code § 1040
N/A	Legal research	27	Gov't Code §§ 6254(k), 6255; Evid. Code § 1040

# **EXHIBIT F**

15-080424 Non-Discloable Log

<u>Date</u>	<u>Description</u>	<u># of pages</u>	<u>Non-Discloable</u>
10/30/2008	Memo fr/John St. Croix to Joe Arellano	1	Gov't Code §§ 6254(k), 6255; Evid. Code § 1040
10/30/2008	Memo fr/John St. Croix to Erica Craven	1	Gov't Code §§ 6254(k), 6255; Evid. Code § 1040
5/6/2008	Memo fr/Richard Mo to ADA Marc Katz & DCA Andrew Shen	1	Gov't Code §§ 6254(k), 6255; Evid. Code § 1040
5/19/2008	Memo fr/DCA Andrew Shen to Richard Mo	1	Gov't Code §§ 6254(k), 6255; Evid. Code § 1040
5/21/2008	Memo fr/ADA Marc Katz to Richard Mo	1	Gov't Code §§ 6254(k), 6255; Evid. Code § 1040
8/29/2008	Memo fr/John St. Croix to Ethics Commission	2	Gov't Code §§ 6254(k), 6255; Evid. Code § 1040

# EXHIBIT G

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

BY FACSIMILE

February 29, 2008

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

Re: Sunshine Ordinance Task Force Complaint # 07077. Allen Grossman, Complainant against Office of the District Attorney; SOTF Order of Determination, November 27, 2007

Mr. St. Croix;

The Administrator of the SOTF has advised me that the letter dated January 31, 2008 from Mr. Doug Comstock, the Chair of the SOTF, referring this matter to the San Francisco Ethics Commission, a copy of which is attached, was sent to the Ethics Commission the same day. With the letter was a CD containing material with reference to this matter. I assume that you have received the letter and accompanying CD. If not, you should contact the SOTF Administrator and let me know when you have those.

As you would expect, I have an understandable interest in the process by which you and the Ethics Commission staff will be enforcing the referred matter. As Mr. Comstock's letter notes, the referral from the SOTF and its finding of "Official Misconduct" are statutory, based on two provisions in the Sunshine Ordinance, namely,

Section 67.30(c), which states, in part:

"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." and

Section 67.34, which states, in part:

"The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct."

The referral comes after the matter was heard and voted upon by the full Task Force and its Committees following testimony taken from the parties (and others) and the submission by the parties of documents that each deemed relevant. The "official record" is complete and is found in the minutes of the meetings, the documents submitted by the parties and the Order of Determination

dated November 27 2007, all of which are included in the CD sent with the referral letter. That record and the SOTF's referral letter reflect the findings made by the SOTF. My original complaint filed with the SOTF did not involve any allegations of a willful violation of the Sunshine Ordinance, so any finding to that effect is the result of action initiated by the SOTF; in addition whatever allegations I made in my original complaint are subsumed in the Order and findings and the only operative aspect is the enforcement by the Ethics Commission of the Order and findings of the SOTF.<sup>1</sup>

Article XV and Appendix C of the City Charter are the operative laws that govern the Ethics Commission. Section 15.105(a) provides, in part, that: "Any elective officer, ... is subject to suspension and removal for official misconduct as provided in this section"; and Section 15.105(e), which defines "Official Misconduct", provides, in part, "When any City law provides that a violation of the law constitutes or is deemed official misconduct, the conduct is covered by this definition and may subject the person to discipline and/or removal from office." Combined those two sections implicate the power and responsibility of the Ethics Commission to act relative to the matter referred to it by the SOTF.

Accordingly, would you please promptly advise me what procedure will be followed by the Ethics Commission and its staff to address and bring this matter to the Ethics Commission for enforcement action. In that connection I urge the staff person assigned to this referral to carefully review the relevant portions of the audiotapes of the full SOTF and its Committee meetings at which my complaint and the subsequent proceedings that resulted in the referral were heard. Since all the material provided the Ethics Commission by the SOTF and the audio records of its meetings are public records, there are no confidentiality issues involved.

Yours Very Truly

Allen Grossman

Attachment: Letter Douglas Comstock, Chair SOTF, to Ethics Commission, dated January 31, 2008.

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<sup>1</sup> Please note that I did not choose to file a complaint "involving allegations of willful violations of [the Sunshine] ordinance... or the Public Records Act" by the District Attorney, an elected "official ... of the City and County of San Francisco". If I had chosen to do so, I would have had to file it directly with the Ethics Commission, in accordance with the second sentence of Section 67.34, in which case it would be treated either as a "Formal Complaint", (Subsection A) or an "Informal Complaint" (Subsection B), depending on whether it was verified.

# **EXHIBIT H**

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

**BY FACSIMILE**

**March 7, 2008**

**Mr. Garrett Chatfield, Investigator/Legal Analyst  
San Francisco Ethics Commission  
25 Van Ness Avenue Suite 220  
San Francisco, CA 94102-6053**

**Re: Ethics Commission Complaint No. 05-080204;  
Sunshine Ordinance Task Force Complaint # 07077;  
Allen Grossman, Complainant against Office of the District Attorney;  
SOTF Order of Determination, November 27, 2007**

**Dear Mr. Chatfield;**

**Last Tuesday, March 4, 2008, the day he received it, the Administrator of the SOTF forwarded to me your letter of February 27, 2008 to Doug Comstock, Chair of the SOTF, regarding the subject matter. Although he has not acknowledged receiving it, by now you have probably seen my February 29, 2008 letter to Mr. St. Croix, Executive Director of the Ethics Commission, also regarding the referral of this matter. In case you have not, a copy is attached.**

**From your letter you seem to be taking the approach that the referral is to be treated as an original complaint filed with the Ethics Commission, with whatever procedure that entails under the Commission's Regulations, including the requirement that the "complaint" and "related materials and deliberations be kept confidential prior to a probable cause determination."**

**As I explained in my letter to Mr. St. Croix, this referral from the SOTF cannot be treated as a "complaint" and there is no probable cause determination to be made by Mr. St. Croix or the Commission. I recognize that the Ethic's Commission's Regulations are quite extensive and the process for coming to a "probable cause determination" quite detailed, but this is a referral from a duly constituted policy body created under a voter - approved ordinance, the San Francisco Sunshine Ordinance, based on the express provisions of that ordinance for enforcement of its determination of Official Misconduct by the San Francisco District Attorney. Under those circumstances any Regulations adopted by the Commission must give way to the mandated requirements of the Sunshine Ordinance. The SOTF has already made the requisite factual findings and found the necessary legal basis for its determination. The role of the Ethics Commission is limited to enforcement of that determination of Official Misconduct.**

**Moreover, there is nothing to be kept confidential, if for no other reason than, as I noted: "Since all the material provided the Ethics Commission by the SOTF and the audio records of its meetings are**

public records, there are no confidentiality issues involved.”

Under the circumstances, you and your colleagues are obliged to limit your “investigation” to the facts that relate to enforcement of the SOTF’s referred determination of Official Misconduct, not to the underlying facts or legal basis for that determination.

Presumably I will soon have Mr. St. Croix’s response that he “promptly advise me what procedure will be followed by the Ethics Commission and its staff to address and bring this matter to the Ethics Commission for enforcement action.”

Yours Very Truly

Allen Grossman

CC: Mr. John St. Croix, Executive Director (w/o attachment)  
Mr. Douglas Comstock, SOTF Chair

Attachment: Letter Allen Grossman to John St. Croix, Executive Director, Ethics Commission, dated February 29, 2008.

# **EXHIBIT I**

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

BY FACSIMILE

May 5, 2008

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

Re: Ethics Commission Complaint No. 05-080204;  
Sunshine Ordinance Task Force Complaint # 07077;

Dear Mr. St. Croix;

You will recall that I wrote you on February 29, 2008 regarding this matter. Subsequently I was provided with a copy of a February 27, 2008 letter to Doug Comstock, Chair of the Sunshine Ordinance Task Force, from Garrett Chatfield, one of your staff investigator-legal analysts, acknowledging the SOTF referral. Mr. Chatfield's letter appeared to treat the referral as just another complaint filed with the Ethics Commission. For that reason I advised him in my March 7, 2008 letter - a copy of which was sent to you - that, as I had explained previously, this referral from the SOTF could not be treated as a "complaint", that there is no probable cause determination to be made by you or the Commission and that there was nothing to be kept confidential because all the material provided the Ethics Commission by the SOTF and the audio records of its meetings were public records.

More than two months have passed since I first wrote you, and neither you nor Mr. Chatfield has responded to my letters. It is apparent I would have heard from you by now, if you could have provided any rational basis for these SOTF referrals to be treated as ordinary complaints filed with the Ethics Commission. The reality is that these SOTF referrals could no more be handled under the Commission's existing Regulations for Investigations and Enforcement of complaints than the Ed Jew "official misconduct" matter could have been.

Since the subject referral was made, there have been additional SOTF referrals to the Ethics Commission based on willful failures of officials to comply with the Sunshine Ordinance and findings by the SOTF of Official Misconduct by the officials involved. There are probably 10 or so SOTF referrals now pending that have not been taken up by the Ethics Commission.

Section 15.102 of Article XV of the City Charter creating the Ethics Commission makes it quite clear that separate rules for hearing referrals from the SOTF are in order. It provides:

**“The Commission may adopt, amend and rescind rules and regulations consistent with and related to carrying out the purposes and provisions of this Charter and ordinances related to campaign finances, conflicts of interest, lobbying, campaign consultants and governmental ethics and to govern procedures of the Commission. In addition, the Commission may adopt rules and regulations relating to carrying out the purposes and provisions of ordinances regarding open meetings and public records.”** (Emphasis mine)

Moreover, the Commission’s investigations and enforcement procedures in Section C3.699.13 of Appendix C to Article XV of the Charter are inapplicable because they are not intended to apply to matters as to which special rules can be adopted by the Commission - those that the Charter provision calls for relating to **“carrying out the purpose and provisions of ordinances regarding open meetings and public records”**.

Furthermore, the whole notion that whatever records are created by the staff and any hearings held by the Commission in connection with SOTF referrals are **“confidential”** is simply wrong. The **“confidentiality”** provision on which you and your staff rely, found in the last paragraph of C3.699.13 (a), only applies to investigations and, then only to those **“relating to campaign finance, lobbying, conflicts of interest and governmental ethics”**, to wit:

**“The commission shall conduct investigations in accordance with this subdivision of alleged violations of this charter and City ordinances relating to campaign finance, lobbying, conflicts of interest and governmental ethics.**

**“(a) Investigations**

**“The investigation shall be conducted in a confidential manner. Records of any investigation shall be considered confidential information to the extent permitted by state law. ...”**

None of your monthly reports over the last two years to the Commissioners mention any actions or non-actions taken with respect to past referrals or their status; nor do any of the minutes reflect that any of these referrals have been heard by the Commission. I understand that the Ethics Commission may believe that these SOTF referrals and their disposition are confidential and that any actions should be taken in closed session, but, as noted above, this is not appropriate in matters arising under open meetings and public records ordinances. Those laws are the antithesis of secrecy.

The California Public Records Act is quite clear that these cases involving failure to disclose public records must be handled expeditiously when an action is brought to enforce a right of inspection or to receive a copy of public records. Section 6258 provides that the **“... times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.”** If you want to understand the importance of this policy, I suggest you read Filarsky v. Superior Court (City of Manhattan Beach), a 2002 case found at 28 Cal.4th 419, 121 Cal.Rptr.2d 844. If public records cases receive expedited treatment on a court’s docket, they certainly are entitled to be moved ahead of complaints filed with Ethics that require investigation. These referrals represent the last opportunity for persons who are denied access to public records to get them without having to incur the significant costs involved in litigation with a city that has over 200 lawyers at its disposal.

Under Section 15.102, rules and regulations related to **“carrying out the purposes and provisions of**

ordinances regarding open meetings and public records” could be adopted and in place within 60 days of their adoption by the Commission. In the more than two months since my first letter, you and your staff could have undertaken the process to submit to the Commissioners a set of rules and regulations for these referrals and the process for their expeditious treatment would have been that much further along.

As he advised the Ethics Commissioners, Bruce Wolfe, a respected long-standing SOTF member, did not reapply for his seat on the SOTF citing, among other reasons, the failure by the Ethics Commission to hear any of SOTF referrals and the undermining effect of its non-action on the SOTF and its determinations. This is what he said to the Board of Supervisors’ Rules Committee, in part:

“The Ethics Commission also claims that they have no process for enforcement for carrying out SOTF orders of determinations but they continue to claim that once the orders come in then it is within their jurisdiction to re-adjudicate the matter and usually, if not, always dismiss it. Under the Sunshine Ordinance, they are supposed to carry out enforcement as a matter of administrative policy as are the other entities including yourselves.”

Reason enough to correct what appears to be an inappropriate unwritten procedure for disposing of SOTF referrals of official misconduct.

In your capacity as Executive Director you are not authorized to make the substantive decisions regarding whether or when these referrals will be taken up and their enforcement considered by the Ethics Commission. Rather, it is incumbent upon you to advise the Commissioners without delay of the increasing number of these SOTF referrals and the urgent need to adopt rules to deal with them. Presumably this matter will be taken up at the next meeting of the Commission. Please provide me with copies (by email) of your communications with the Commissioners with regard to this matter.

Yours Very Truly,

Allen Grossman

# EXHIBIT J

**PUBLIC RECORDS REQUEST VIA FACSIMILE**

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

**Date:** March 6, 2009

**Name of Requester:** Allen Grossman  
**Requester Address:** 111 30<sup>th</sup> Avenue  
**City/State/Zip:** San Francisco, CA 94121-1005  
**Telephone:** 415-831-3720 (Number to be called to clarify request)  
**Email:** grossman356@mac.com

This is a public records request pursuant to Section 67.21(b) of the San Francisco Sunshine Ordinance and Section 6253(b) of the California Public Records Act and any other applicable provisions of California Public Records Act and the San Francisco Sunshine Ordinance for copies of the following public records in the custody or control of or maintained by the Ethics Commission, its Executive Director, its staff or any Commissioner for the period beginning January 1, 2006 and ending December 31, 2008 relating or with respect to, or in connection with (1) all referrals from the Sunshine Ordinance Task Force (other than those with respect to your files numbered 05-080204 and 15-080424 and those records provided to the Ethics Commission by the Sunshine Ordinance Task Force or by the Ethics Commission to the Sunshine Ordinance Task Force) for (a) violations of the San Francisco Sunshine Ordinance, (b) Official Misconduct under the San Francisco Sunshine Ordinance and (c) violations of the California Public Records Act or the Brown Act, (2) responses to the Sunshine Ordinance Task Force to such referrals and (3) advice or opinions from the City Attorney with respect to such referrals, including, without limitation:

1. Memoranda, reports, emails or other correspondence or communications to, from or among any one or more of (a) the Ethics Commission, (b) any one or more of the Commissioners, (c) the Executive Director, or any staff member or other person in his office and/or (d) any Deputy City Attorney or other person in the City Attorney's Office;
2. Notes of any telephone or personal conversations, notes of staff or other meetings and Executive Director's calendars; and
3. Drafts of any of the foregoing, including drafts or other writings prepared by the City Attorney's Office.

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

Your attention is called to the following:

Section 3 of the Ethics Commission By-Laws that provides, in part:

"The Commission shall comply with all applicable laws, including, but not limited to, ...the San Francisco Sunshine Ordinance (Administrative Code sections 67.01 et seq.)..."

The last sentence of Section 67.21(i) of the San Francisco Sunshine Ordinance that states:

"All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records."

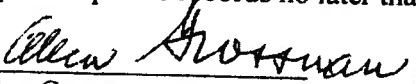
Sections 67.24 (b)(1) (ii) and (iii) of the San Francisco Sunshine Ordinance that provide:

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

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

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

In accordance with Section 67.25(a) of the Sunshine Ordinance, please provide the copies of the requested public records no later than Tuesday, March 17, 2009.

  
Allen Grossman

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\*\*\* TX REPORT \*\*\*  
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TRANSMISSION COMPLETED

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DESTINATION NUMBER 2523112  
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PAGES SENT 3  
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ALLEN GROSSMAN.  
111 30<sup>th</sup> AVENUE  
SAN FRANCISCO, CALIFORNIA 94121-1005  
TELEPHONE: (415) 831-3720  
FACSIMILE: (415) 831-3721  
E-MAIL: grossman356@mac.com

**FACSIMILE TRANSMITTAL**

**To:** John St. Croix, Executive Director  
**Of:** San Francisco Ethics Commission  
**FAX Number:** (415) 252 - 3112  
**Phone Number:** (415) 252 - 3100  
**Number of Pages:** 3, including cover sheet  
**Date:** March 6, 2009  
**From:** Allen Grossman  
**Re:** Public Records Request dated today.  
**Message:** Please acknowledge receipt of this request by email to the above email address. Thank You.

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

**CONFIDENTIALITY NOTE:** The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the receiver of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this

# EXHIBIT K

**From:** Allen Grossman <grossman356@mac.com>  
**Subject:** Fwd: Records Request March 6, 2009  
**Date:** March 19, 2009 8:39:13 AM PDT  
**To:** john.st.croix@sfgov.org  
1 Attachment, 1.9 MB Save

Begin forwarded message:

**From:** Allen Grossman <grossman356@mac.com>  
**Date:** March 19, 2009 8:33:30 AM PDT  
**To:** john.stcroix@sfgov.org  
**Cc:** Richard Mo <Richard.Mo@sfgov.org>  
**Subject:** Records Request March 6, 2009

Dear Mr. St. Croix,

As you know, on Friday March 6, 2009 I submitted the attached records request to you by FAX. The report included shows that it was received by your office.

As noted in the last sentence of the request, the copies of the requested records were to be provided to me by last Tuesday, March 17, 2009. I have received no acknowledgement of your receipt of the request nor any records in response to the request. Your compliance with the request is overdue.

Thank You,

Allen Grossman

  
Records Req...pdf (1.9 MB)