

The Austin Bulldog
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Austin, Texas 78765
512-474-1022

Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Via Certified Mail, Return Receipt Requested

June 7, 2010

Dear Attorney General Greg Abbott,

Please accept this letter as my comments in connection with my Open Records Requests No. 10 made to the City of Georgetown, Texas, under the Texas Open Records Act.

Per Assistant Attorney General James Coggeshall, these comments pertain to your File No. 389082.

The purpose of my comments are to refute certain arguments made by Georgetown City Attorney Mark Sokolow and Assistant City Attorney Bridget Chapman.

1. "there is no complete performance review and evaluation of the city attorney...."

As a condition of setting the salary of Mark Sokolow when he was hired on or about October 19, 2009, after the initial six months of employment he was to undergo a review in consideration of a possible annual salary increase of \$5,000. (See Section 3B of the Letter of Agreement dated September 14, 2009. The Letter of Agreement was included as Exhibit C of the City of Georgetown's letter dated May 28, 2010, which stated the reasons why Mark Sokolow and Bridget Chapman believe his performance evaluation should not be exempted from release.)

Please note that the Georgetown City Council met on April 27, 2010, with Item D on the executive session agenda:

Sec. 551.074 Personnel Matters

1. To discuss with the City Attorney his duties and evaluation

A copy of the April 27, 2010, agenda is attached as Exhibit A.

On April 27, 2010, the Georgetown City Council voted 5-2 to approve a pay raise of \$5,000 per year for Mark Sokolow based on his evaluation.

A copy of the minutes of the April 27, 2010, council meeting that recorded the 5-2 vote for Sokolow's pay raise is attached as Exhibit B.

A City of Georgetown Personnel Action Form was signed by Mayor George Garver on May 18, 2010, to increase Mark Sokolow's pay from \$125,000 per year to \$130,000 a year, based on his evaluation by the city council.

A copy of that Personnel Action form is attached as Exhibit C.

As indicated in my Open Records Request No. 10 of May 16, 2010, the evaluations of the performance of Mark Sokolow as city attorney for Georgetown were delivered in writing by the mayor and members of the Georgetown City Council during executive sessions held on or about May 13, 2010, and on any other dates on which Mark Sokolow may have received such written evaluations by the mayor and council members.

On page 4 of the Sokolow-Chapman letter of May 28, 2010, which seeks exemption from releasing Mark Sokolow's performance evaluations, in the first paragraph it states that he received only a compilation of comments from various council members, without attributing the comments to the council member who made them.

That may be true, initially. However, I have been informed that written statements concerning Mark Sokolow's performance evaluation were subsequently entered into the record by the council members who chose to do so, and that some council members may have chosen not to do so. Thus, the evaluation of Mark Sokolow's performance is indeed a completed performance evaluation. The fact that some council members may not have prepared written statements evaluating the performance of Mark Sokolow is of no consequence in this matter.

The facts are these:

- Mark Sokolow's pay raise was conditioned upon receiving a performance evaluation.
- The council meeting agenda for April 27, 2010, stated that his performance would be evaluated in executive session.
- In an open council session subsequent to the executive session, the city council voted to approve a pay raise based on his performance evaluation.

Thus, to argue that a performance evaluation has not been completed appears to be untrue.

2. A provision contained in Section 2 of the Letter of Agreement dated September 14, 2009, states, "Any written evaluation or statement concerning the Employee's performance shall be confidential...."

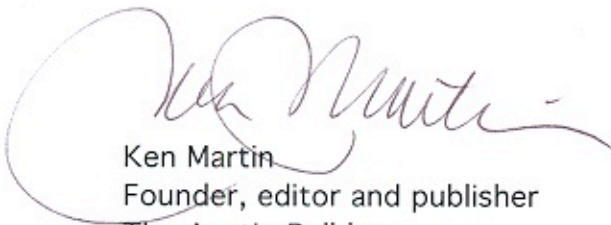
Any contractual provision to maintain confidentiality of Mark Sokolow's performance appears to be invalid on its face, as I find nothing in the Texas Open Records Act that would allow Mark Sokolow's performance evaluations to be withheld from public disclosure upon proper request.

I request that the attorney general compel the City of Georgetown to release the performance evaluations of City Attorney Mark Sokolow that were written by the mayor and city council members who chose to submit written statements.

If any other information is needed to clarify this complaint, please do not hesitate to call or write.

I would appreciate a decision in this matter at your earliest convenience.

Yours truly,

A handwritten signature in dark ink, appearing to read "Ken Martin", with a large, stylized loop at the beginning.

Ken Martin

Founder, editor and publisher

The Austin Bulldog

An initiative of the Austin Investigative Reporting Project, a 501(c)(3) nonprofit

Copy to: *Via regular mail*

Mark Sokolow

City Attorney of Georgetown

P.O. Box 409

Georgetown, Texas 78627-0409

Exhibit A

Notice of Meeting of the Governing Body of the City of Georgetown, Texas APRIL 27, 2010

The Georgetown City Council will meet on APRIL 27, 2010 at 4:00 P.M. at Council Chambers at 101 E. 7th Street

If you need accommodations for a disability, please notify the city in advance.

Policy Development/Review Workshop -

- A Parks and Recreation Operational Issues and Update -- Kimberly Garrett, Director of Parks and Recreation
- B Discussion related to issues of alignment, design, environmental, Right of Way and other issues related to the constructability of the Southwest Bypass from SH 29 to IH-35, West of IH-35 -- Jim Briggs, Assistant City Manager for Utility Operations and Ed Polasek, Principal Planner

Executive Session

In compliance with the Open Meetings Act, Chapter 551, Government Code, Vernon's Texas Codes, Annotated, the items listed below will be discussed in closed session and are subject to action in the regular session.

C **Sec 551.071: Consultation with Attorney**

- 1. Advice from attorney about pending or contemplated litigation and other matters on which the attorney has a duty to advise the City Council, including this week's agenda items

D **Sec. 551.074 Personnel Matters**

- 1. To discuss with the City Attorney his duties and evaluation

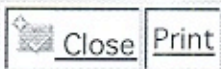
E **Sec 551.086 Competitive Matters**

- 1. Discussion on MPO Supplier Service bid -- Jim Briggs, Assistant City Manager for Utility Operations

Adjournment

Certificate of Posting

Exhibit B



Minutes of the Meeting of the Governing Body of the City of Georgetown, Texas Tuesday, April 27, 2010

The City Council of the City of Georgetown, Texas, met in Regular Session on the above date with Mayor George Garver presiding.

Council Present:

Keith Brainard, Gabe Sansing, Dale Ross, Ben Oliver, Bill Sattler, Pat Berryman, Patty Eason

Council Absent:

All Council Present

Staff Present:

Paul E. Brandenburg, City Manager; Mark Sokolow, City Attorney; Jessica Hamilton, City Secretary; Jim Briggs, Assistant City Manager for Utility Operations; Micki Rundell, Chief Financial Officer; Kimberly Garrett, Director of Parks and Recreation; Randy Morrow, Director of Community Services; Laurie Brewer, Assistant Director of Finance; Thomas R. Benz, Systems Engineering Director; Glenn Dishong, Water Services Director; Jordan Maddox, AICP, Planner III; Elizabeth Cook, Director of Community Development; Brent Schacherl, Police Lieutenant; Ken Arnold, Energy Services Director; Edward G. Polasek, AICP, Principal Planner; Carla Benton, Planner II; Rachel Osgood, Environmental Services Manager; Wayne Nero, Police Chief;

Minutes

Regular Session - To begin no earlier than 06:17 PM

(Council may, at any time, recess the Regular Session to convene an Executive Session at the request of the Mayor, a Councilmember, or the City Manager for any purpose authorized by the Open Meetings Act, Texas Government Code Chapter 551.)

A Call to Order**Pledge of Allegiance****Comments from the Mayor**

- Welcome and Meeting Procedures
- Presentation of National Historic Preservation Month Proclamation

Mayor presented Connie Watson and Shelly Hargrove with the Proclamation. Hargrove spoke about the month of May being Historic Preservation Month and holds the theme of "old is the new green." Hargrove spoke about a local scavenger hunt for historic preservation. Watson thanked the Council for supporting historic preservation in Georgetown.

City Manager Comments

- May 8, 2010 Election
- Community Development Website
- 2010 Red Poppy Festival
- Summer Water Management Plan begins May 1st

Action from Executive Session

Motion by Sattler, second by Sansing to enter into a contract with CPS to supply the market purchase option for the term December 5, 2010 to June 24, 2011. **Approved 7-0**

Motion by Brainard, second by that Council approve a salary adjustment for the City Attorney consistent with that approved in the Attorney's employee agreement. **Approved 5-2** (Sansing, Eason opposed)

Public Wishing to Address Council

On a subject that is posted on this agenda: Please fill out a speaker registration form which can be found on the table at the entrance to the Council Chamber. Clearly print your name and the letter of the item on which you wish to speak and present it to the City Secretary on the dais, preferably prior to the start of the meeting. You will be called forward to speak when the Council considers that item.

On a subject not posted on the agenda: Persons may add an item to a future City Council agenda by contacting the City Secretary no later than noon on the Wednesday prior to the Tuesday meeting, with the subject matter of the topic they would like to address and their name. The City Secretary can be reached at 512/930-3651.

B - As of the deadline, no persons were signed up to speak on items other than what was posted on the agenda.

Statutory Consent Agenda

The Statutory Consent Agenda includes non-controversial and routine items that Council may act on with one single vote. A councilmember may pull any item from the Consent Agenda in order that the council discuss and act upon it individually as part of the Regular Agenda.

C Consideration and possible action to approve the **minutes** of the Workshop and Regular Council Meeting held on Tuesday, April 13, 2010 -- Jessica Hamilton, City Secretary

D Consideration and possible action to approve the **appointment of Mr. Rusty Winkstern and Mr. Lucas Adams** to the **Main Street Advisory Board** to fill vacancies due to resignations on that Board -- Mayor George Garver

E Consideration and possible action to approve the **appointment of Ms. Connie Watson as Chairman** for the **Main Street Advisory Board** -- Mayor George Garver

G Consideration and possible action to approve a Resolution determining that any and all documents as it pertains to the negotiation of power agreements and the purchase of any percentage of ownership in any power plant as well as the compilation of data for individual power construction projects is a **Competitive Matter** as contemplated by Sections 551.086 and 552.133 of the government code and establishing an effective date -- Jim Briggs, Assistant City Manager for Utility Operations and Mark Sokolow, City Attorney

H Consideration and possible action to approve a **grant application to the National Parks and Recreation Association (NRPA) for community garden programming** in the amount of **\$5,000** -- Kimberly Garrett, Parks and Recreation Director; Randy Morrow, Director of Community Services

I Consideration and possible action to approve the **Report on the City's 2010 Grant Initiative Program and Request for Qualifications process** for grant writing services -- Laurie Brewer, Assistant Director of Finance and Paul E. Brandenburg, City Manager

Exhibit C

**CITY OF GEORGETOWN
PERSONNEL ACTION FORM**

(Obtain Division Level Signature then forward to Human Resources for processing)

Name of Employee Mark Sokolow

Employee No: 7481

Job Title City Attorney

Effective Date 05/03/2010

TYPE OF ACTION	<input type="checkbox"/> Employment	<input type="checkbox"/> Re-Classification	<input type="checkbox"/> Resignation	
	<input type="checkbox"/> Transfer	<input type="checkbox"/> Promotion	<input type="checkbox"/> Termination	
	<input type="checkbox"/> Leave of Absence	<input checked="" type="checkbox"/> Salary Adjustment	<input type="checkbox"/> Other _____	
	<input type="checkbox"/> Return from Leave	<input type="checkbox"/> Status Change	(Specify) _____	
POSITION INFORMATION	New Hire / From		To	
	Job Title _____		_____	
	Position Code _____		_____	
	Pay Grade / Step _____		_____	
	Department Name _____		_____	
	Department Number _____		_____	
	Budget Account Line _____		_____	
	Salary: Annually	\$ <u>125,000</u>	\$ <u>130,000.00</u>	
	Payroll Use {	Biweekly	\$ _____	\$ <u>5,000.00</u>
		Hourly	\$ _____	\$ <u>62.50</u>
	FLSA Category	<input type="checkbox"/> Exempt <input type="checkbox"/> Non-Exempt	<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Non-Exempt	
	Status (Check One)	<input type="checkbox"/> Regular <input type="checkbox"/> Temp	<input checked="" type="checkbox"/> Regular <input type="checkbox"/> Temp	
		<input type="checkbox"/> Full Time <input type="checkbox"/> ½ Time	<input checked="" type="checkbox"/> Full Time <input type="checkbox"/> ½ Time	
		<input type="checkbox"/> Part Time <input type="checkbox"/> Quarter Time	<input type="checkbox"/> Part Time <input type="checkbox"/> Quarter Time	
	Normal Work Schedule	Days _____ Hrs/Week _____	Days _____ Hrs/Week _____	
Will Schedule Vary	<input type="checkbox"/> Rarely <input type="checkbox"/> Occasionally <input type="checkbox"/> Rarely			
EXIT	Eligible for Rehire? <input type="checkbox"/> Yes <input type="checkbox"/> No			
	Terminated employee must have exit interview before final benefit check is issued.			
COMMENTS	Council Approval - April 27, 2010			
	Six month increase (\$5,000) pursuant to contract (Section 3, B.) and Council Approval			

Rec'd by Human Resources	
Initial <u>HS</u>	Date <u>5/18/10</u>
Rec'd by Payroll	
Initial _____	Date _____
New Employee # _____	

[Signature]
Supervisor Signature

5-18-10
Date

Division Director Signature

Date

City Manager Signature

Date