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Via Certified Mail, Return Receipt Requested

September 16, 2010

re: Request for investigation

Dear District Attorney Bradley and County Attorney Duty:

This is a request for you to investigate whether the City of Georgetown and Georgetown Council Member Pat Berryman have violated §552.353 of the Government Code: Failure or Refusal of Officer for Public information to Provide Access to or Copying Of Public Information.

If the evidence shows that a violation has occurred, I request that, in accordance with §552.3215 of the Government Code, you initiate an action for a declaratory judgment or injunctive relief be brought against the City of Georgetown and City Council Member Pat Berryman to make available for public inspection the information I requested under the Texas Public Information Act, as directed by the Attorney General's Opinion Letter OR2010-11849 of August 5, 2010.

§552.353(a) states:

An officer for public information, or the officer's agent, commits an offense if, with criminal negligence, the officer or the officer's agent fails or refuses to give access to, to permit or provide copying of, public information to a requestor as provided by this chapter.

I am the requestor.

The governmental body that committed the violation is the City of Georgetown and Georgetown City Council Member Pat Berryman.

The time and place of the violation includes the entire period from August 5, 2010, to date.

Background

I submitted Open Records Request No. 13 to the City of Georgetown on May 17, 2010, to request that Council Member Pat Berryman produce 19 types of records to substantiate the expenses for which she claimed reimbursement, and for which she was paid a lump sum of \$13,600. (See Exhibit A.)

Georgetown Assistant Attorney Bridget Chapman forwarded my request to the Attorney General in a letter dated June 1, 2010. Chapman's letter states the city does not believe the requested records are public information. The letter further states the city does not own the information or have a right to access it. (See Exhibit B.)

I submitted comments to the Attorney General in a letter dated June 3, 2010, to argue that the requested records are public records. I requested that the Attorney General direct the City of Georgetown and Council Member Pat Berryman to produce any and all responsive records that are not exempted from disclosure. (See Exhibit C.)

The Attorney General's Open Records Letter Ruling, OR2010-11849, dated August 5, 2010, concluded the city must release the requested information pursuant to Section 552.302 of the Government Code. (See Exhibit D.)

Based on Attorney General's Open Records Letter Ruling OR2010-11849, I sent an e-mail to Georgetown Assistant City Attorney Bridget Chapman on August 8, 2010, to request these records. I copied the city attorney, city legal assistant, and Council Member Berryman on that e-mail. (See Exhibit E.)

It has now been six weeks since the Attorney General rendered a decision in this matter and concluded the city must release the requested information, yet I have not received a reply to my e-mail, or any indication whatsoever that the City of Georgetown and Council Member Berryman will release the records, as ordered by the Attorney General.

The violation

The Attorney General's Open Records Letter Ruling OR2010-11689 concluded the City of Georgetown and Council Member Pat Berryman must release the requested information.

The City of Georgetown and Georgetown Council Member Berryman have not complied with that directive.

The failure to provide the records as ordered by the Attorney General is a violation of Section 552.353 of the Government Code: Failure or Refusal of Officer for Public information to Provide Access to or Copying Of Public Information.

The City of Georgetown and Council Member Pat Berryman have not demonstrated an affirmative defense to prosecution, as provided by §552.353(b), because:

- (1) The City of Georgetown sought an opinion from the Attorney General.
- (2) The Attorney General rendered an opinion.
- (3) The City of Georgetown and Council Member Pat Berryman have not filed a petition for declaratory judgment, a writ of mandamus, or both, against the Attorney General seeking relief from compliance with the decision of the Attorney General.

I hereby request that the you exercise your authority to determine if there was a violation of §552.353 of the Government Code.

Further, if you find that a violation of §552.353 of the Government Code has occurred, I request that you exercise your authority under §552.3215 of the Government Code to initiate an action for a declaratory judgment or injunctive relief be brought against the City of Georgetown and City Council Member Pat Berryman to make available for public inspection the information I requested under the Texas Public Information Act, as so directed by the Attorney General's Opinion Letter OR2010-11849 of August 5, 2010.

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

I would appreciate a response to indicate what action may be taken.

Yours truly,

Ken Martin
Founder, editor and publisher
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