

**The Austin Bulldog
P.O. Box 4400
Austin, Texas 78765
512 474-1022**

March 23, 2011

The Honorable David Escamilla
Travis County Attorney
314 West 11th Street
Room 300
Austin, TX 78701

RE: Civil Complaint by The Austin Bulldog Against the City of Austin and City Council Members Pursuant to Tex. Gov't Code section 552.3215

Dear Mr. Escamilla,

The Austin Bulldog files this complaint against the City of Austin and the Austin City Council members pursuant to Tex. Gov't Code section 552.3215 (the Texas Public Information Act, TPIA). I ask you to use your authority to determine if the City and its officials have violated the TPIA. If you determine that the City and its officials did violate the TPIA and do not respond quickly to comply with the TPIA, then I ask you to seek a court order requiring the City of Austin, the Council members and City staff, to comply with the TPIA.

Under TPIA section 552.3215(b) and (c), you have authority to investigate whether the City of Austin has violated the TPIA. And if you so determine, you have authority to bring a lawsuit in the name of the State for a declaratory judgment and injunctive relief for violation of the TPIA. Section 552.3215(k) makes it clear that if you bring such a lawsuit against the City, it is "in addition to any other civil, administrative, or criminal action provided by this chapter or another law." The Austin Bulldog retained legal counsel, Bill Aleshire of the law firm of Riggs Aleshire & Ray, and filed suit against the Council members and the City to obtain public records. The City is using its vast financial resources, including employment of outside private legal counsel, to resist this lawsuit. On March 18, 2011, the City and Council Member Defendants rejected a settlement offer in which they were asked to provide emails about public business from their personal email accounts and agree to be enjoined from continuing to conduct public business in that secret fashion.

Violations of the TPIA

The Austin Bulldog alleges that the City of Austin (including its Council Members and certain staff) engages in a pattern and practice of deliberate or negligent acts that violate the public's right of access to public information. The City of Austin has violated the Texas Public Information Act by withholding public information in the following ways:

- (1) by using their personal email addresses to correspond about public business, deliberately to attempt to conceal this information from the public;
- (2) by permitting City officials and employees to delete electronic correspondence without review by any person to ensure that such destruction of these public records complies with record managements laws for retention of certain correspondence for up to 5 years;
- (3) by concealing the personal email addresses used by Council Members and employees to conduct public business based on TPIA section 552.137 that permits such redaction only of email addresses of “a member of the public”;
- (4) by failing to properly search for records in response to open records requests; and
- (5) by failing to “promptly” disclose public information as required by TPIA section 552.221.

Austin Bulldog Open Records Requests

Under the TPIA, the Austin Bulldog made open records requests on January 19 and 27, 2011 to each member of the Austin City Council and to City of Austin for copies of any “written communication” between Council members since January 1, 2010. On February 22, 2011, the City of Austin responded, claiming that emails concerning City business, created by the Council members using their private email accounts, were not “public information” subject to the TPIA. Since the lawsuit was filed, the Mayor and Mayor Pro Tem have supplemented their original response with hundreds of additional emails, demonstrating their lack of compliance with the TPIA, but for the lawsuit.

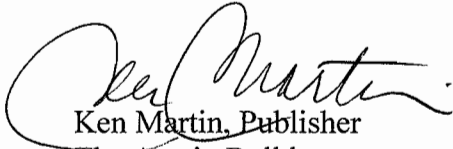
I also became aware, from other sources, that the Council members and staff use an in-house “chat” system called SPARK to communicate about City business deliberately disabling the program feature that would retain a record of such written communication. On March 22, 2011, the City responded to an open records request I made on February 26, 2011 for copies of emails that were deleted by Council Members and their staff since January 18, 2011. This response showed that the City unlawfully redacts the personal email addresses used by City Council members in conducting this public business. This response also demonstrates that Council Members and their staff deleted email correspondence that is required by records retention laws to be retained for up to 5 years.

I believe the City officials have violated TPIA section 552.021, and exceeded their authority under TPIA section 552.004, by withholding the emails (and other written communication) about public business and by failing to maintain local government records as required by the Local Government Records Act (LGRA), Tex. Local. Gov’t Code, Chapters 201-203 so the records are available for disclosure under the TPIA. I want to emphasize that I respect the right of privacy of the City officials and have not requested and do not want copies of emails that concern their personal matters. But public records should not escape public

disclosure merely because a City official or employee decides to create that official correspondence on their personal email account.

The City Council has shown its stubbornness by refusing to voluntarily disclose obviously public information. For this reason, that The Austin Bulldog asks you to find that the City of Austin and Council members violated the TPIA, and upon such finding, to take all steps necessary to obtain compliance by the Austin officials. If the City officials continue to refuse to disclose the requested information, then, The Austin Bulldog asks you to exercise your authority under TPIA section 552.3215 and file suit seeking the declarations and injunctions authorized by that section.

Respectfully,

A handwritten signature in black ink, appearing to read "Ken Martin". The signature is fluid and cursive, with a large initial "K" and "M".

Ken Martin, Publisher

The Austin Bulldog

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