



between Council members using their personal email addresses, were unlawfully redacted to conceal the email addresses (and, sometimes, the identity) of the Council members, who, when they are writing such city business correspondence, are not “members of the public” for whom personal email addresses must be redacted under TPIA section 552.137;

c. Specifies a claim, included in the original petition, that the City has unlawfully withheld emails from Council members and the City Manager about invitations they received in 2010 to attend events related to or in the course of carrying out their role as city officials.

d. Amends the names of the parties to exclude Randi Shade, who was sued in her official capacity but is no longer a member of the City Council.

### **PARTIES**

2. Plaintiff is The Austin Bulldog, which is the assumed name for the Austin Investigative Reporting Project, a Texas nonprofit corporation. It can be served in this case through its attorneys of record.

3. Defendants are:

a. The “Defendant Records Custodians” are:

(1) Lee Leffingwell is sued in his official capacity as Mayor for the City of Austin and as the custodian of records created or received by him in the transaction of public business. Mayor Leffingwell has been served.

(2) Chris Riley is sued in his official capacity as Austin Council Member Place 1 and as the custodian of records created or received by him in the transaction of public business. Council Member Riley has been served.

(3) Mike Martinez is sued in his official capacity as Austin Council Member Place 2 and as the custodian of records created or received by him in the transaction of public

business. Council Member Martinez has been served.

(4) All claims against Randi Shade are non-suited, as she is no longer a member of the City Council.

(5) Laura Morrison is sued in her official capacity as Austin Council Member Place 4 and as the custodian of records created or received by her in the transaction of public business. Counsel Member Morrison has been served.

(6) Bill Spelman is sued in his official capacity as Austin Council Member Place 5 and as the custodian of records created or received by him in the transaction of public business. Council Member Spelman has been served.

(7) Sheryl Cole, Mayor Pro Tem, is sued in her official capacity as Austin Council Member Place 6 and as the custodian of records created or received by her in the transaction of public business. Mayor Pro Tem Cole has been served.

b. The City of Austin is a municipality and is sued as a “governmental body” pursuant to the Texas Public Information Act. The City of Austin has been served.

#### **SUPPLEMENTAL FACTS**

4. This lawsuit was filed on March 1, 2011 over open records requests made by the Austin Bulldog on January 19<sup>th</sup> and 27<sup>th</sup> 2011. Only after this suit was filed did the City Council provide emails they wrote to each other during 2010 that were requested by the Austin Bulldog. In their Answer filed on April 11, 2011, the Defendants claimed the requested records “had been released to [the Austin Bulldog] or is in the process of being released.” But even after the Attorney General ruled, in OR2011-05507, that the City could not withhold emailed invitations related to their positions as Council members, the City has failed to provide the additional records.

5. On April 7, 2011, the Council adopted a new “policy” requiring Council members to place emails about public business, sent or received on their “personal communication devices” onto a city computer server so the City could comply with the TPIA and make those public records available to the public. Four months later, the City Manager adopted a similar policy related to emails City staff members sent or received on their personal communication devices.

6. Despite the showmanship the Council displayed in adopting the new policy, certain Council members and the City Manager refused, *again*, to release publicly the emails about public business they had hidden on their personal email accounts in 2009. On May 1, 2011, the Austin Bulldog made an open records request to the Council and City for emails and other written communications “from the mayor or council members or city manager to ... any council member(s) or the mayor or the city manager from January 1, 2009 through December 31, 2009.” Attached Exhibit P-4. The request made it clear that the communications included any that involved city business regardless of whether the communication was written on city equipment or sent or received on personal email accounts.

7. Over a month later, on June 8, 2011, the response to the request for the 2009 emails was received. The cover letter for the response from city Public Information Specialist Kyle Carvell, said in part, “Please note that in the instance where there are emails from individual’s personal email accounts, those individuals *voluntarily* forwarded the emails to the City server, so that they could be included in the City’s response to your request.” Exhibit P-5 (emphasis added).

8. Several Council members did provide such emails. Like the emails provided relating to the request for 2010 emails, those emails were redacted—at no small expense—to hide the personal email address of the Council members and City staff who were communicating inside the government about official business.

9. But no emails written on personal email accounts were received from Council members Martinez, Cole, or Spelman nor from City Manager Marc Ott. Since the City's cover letter indicated that emails from personal email accounts were provided only "voluntarily," the Austin Bulldog is left to assume that these individuals believe they have no legal duty to disclose these public records but can choose, by themselves, which public records the public can see and which they cannot see.

### **SUPPLEMENTAL CAUSES OF ACTION**

#### **COUNT 1 and 2 From First Amended Petition**

10. The same rule of law applies to the emails the Austin Bulldog requested in its First Amended Petition for 2010 email correspondence as applies to the more recent Bulldog records request for 2009 email correspondence. Therefore, the Austin Bulldog adds its claim for mandamus and declaratory judgment and injunctive relief relating to the 2009 emails.

11. The Austin Bulldog asserts its claim under the Texas Public Information Act to obtain copies of the emails in 2010 that constituted invitations to events to City Council members.

#### **COUNT 3 – Redacted Email Addresses of City Officials**

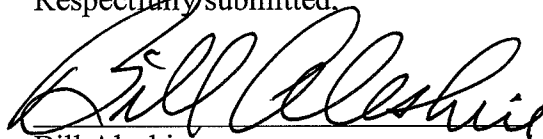
12. The email addresses used by City Council members or other City officials, including the City Manager, in the transaction of business of the City of Austin are not confidential because such city officials' emails are not from or to "members of the public" for whom personal email addresses must be redacted under TPIA section 552.137. The Austin Bulldog asks the Court to hold that such email addresses of public officials are not confidential and to order the City to provide copies of the emails without redaction of any email address used by any member of the City Council or the City Manager in transaction of City business.

## PRAYER

For these reasons, Plaintiff, The Austin Bulldog, supplements its Prayer for relief and asks that the Court:

- a. for the same relief pled in its First Amended Petition as applied to the emails requested by the Austin Bulldog on May 1, 2011 in Exhibit P-4;
- b. to order the City of Austin to provide the Austin Bulldog with copies of emails in 2010 that constituted invitations to events to City Council members;
- c. to hold that personal email addresses used by City officials in the transaction of City business are not confidential under TPIA section 552.137, and to order the City to provide copies of the emails without redaction of any email address used by any member of the City Council or the City Manager in transaction of City business, within the scope of the Austin Bulldog's open records requests at issue in this case; and
- d. to grant to Plaintiff such other and further relief, at law and in equity, to which it shows itself to be justly entitled.

Respectfully submitted,




Bill Aleshire  
State Bar No. 24031810  
Jason Ray  
State Bar No. 24000511  
RIGGS ALESHIRE & RAY, P.C.  
700 Lavaca St., Suite 920  
Austin, Texas 78701  
512 457-9806  
512 457-9066 facsimile

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served on the parties, through counsel of record, via facsimile on September 1, 2011.

James E. Cousar  
Thompson & Knight, LLP  
98 San Jacinto Blvd., Suite #1900  
Austin, Texas 78701-4238  
512 469-6112  
**512 469-6180**  
**James.Cousar@tklaw.com**



Bill Aleshire

**From:** Ken Martin [ken@theaustinbulldog.org]

**Sent:** Sunday, May 01, 2011 8:23 PM

**To:** public.information@ci.austin.tx.us; lee.leffingwell@ci.austin.tx.us;  
mike.martinez@ci.austitiin.tx.us; Chris Riley; Randi Shade; Laura Morrison;  
bill.spelman@ci.austin.tx.us; Sheryl Cole

**Cc:** Bill Aleshire

**Subject:** Open Records Request No. 16

Dear Kyle Carvell and Mayor and Council Members as Custodian of the Records of Your Offices:

Please acknowledge receipt of this request by e-mailing me at [ken@theaustinbulldog.org](mailto:ken@theaustinbulldog.org)

Pursuant to the Texas Public Information Act (TPIA), Chapter 552, Texas Government Code, which guarantees the public's access to information in the custody of government agencies, I respectfully request that you promptly (“as soon as possible, under the circumstances, that is, in a reasonable time, without delay”) provide me with:

E-mails, text messages, letters, memoranda, notes, or other forms of written communication from the mayor or council members or city manager to (or copied to, or blind copied to) any council member(s) or the mayor or the city manager from January 1, 2009 through December 31, 2009.

This includes all forms of written communication involving the conduct of city business, including written communication sent or received on city equipment and accounts or sent or received on personal e-mail or text message accounts.

This request includes all such written communication regardless of whether other persons also were sent the communication.

This includes records that may be included in the in boxes or sent files, as well as archive files, subject matter files, or delete files.

If any e-mails within the scope of this request were initially deleted, then this request applies to any backup copy of such e-mail(s) that are subject to retention under Texas Government Code Chapter 441; Local Government Code, Title 6, Subtitle C; and the City of Austin's Local Government Records Control Schedule for the mayor and council offices.

This request does not include any communications that qualify for exception due to attorney-client privilege.

This does not include Routine Correspondence and Internal Memoranda that is only required to be retained until its administrative value expires, such as correspondence and internal memoranda including letters of transmittal, requests for publications, internal meeting notices, and similar routine matters. (See City of Austin Records Control Schedule GR1000-26c.)

I would prefer to receive copies of these records via e-mail in pdf format, if possible. If the volume of records makes e-mailing impracticable, I would prefer to receive these records on a computer disk (CD) using a pdf format.

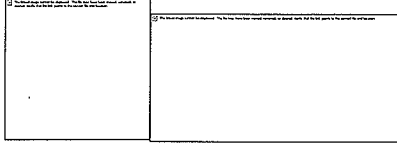
I am represented in this matter by attorney Bill Aleshire of Riggs Aleshire & Ray P.C., who can be reached at 512-457-9838 or e-mail at [Aleshire@R-ALaw.com](mailto:Aleshire@R-ALaw.com). If you need clarification of this request, or if you believe that any of the information I have requested is within an exception to disclosure and you may request a ruling from the Texas Attorney General on that issue, I invite you to contact Mr. Aleshire first, so that I may consider amending my request to avoid any unnecessary ruling request or unintended issue about disclosure.





I agree to pay the reasonable cost of providing this public information as provided by the TPIA. However, since The Austin Bulldog is a 501(c)(3) nonprofit providing the public with information about their city government, I request that the city waive all fees and provide responsive documents free of charge pursuant to Section 552.267 of the Texas Public Information Act.

Ken Martin  
Founder, Editor & Publisher  
The Austin Bulldog



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

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P.O. Box 4400 Austin TX 78765



# City of Austin

NEWS RELEASE

**Communications and Public Information Office**

301 W. Second St., Austin, TX 78701

June 8, 2011

Ken Martin  
P.O. Box 4400  
Austin, TX 78765

RE: PIR 8926; Your Reference # 16

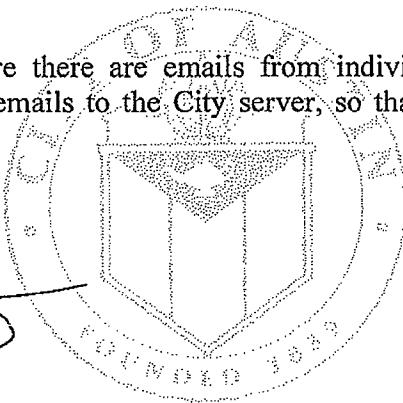
Dear Mr. Martin:

In response to your above-referenced Public Information Act request, the City is providing one disk with all of the responsive information.

Please note that in the instance where there are emails from individual's personal email accounts, those individuals voluntarily forwarded the emails to the City server, so that they could be included in the City's response to your request.

Very truly yours,

Kyle Carvell  
Public Information Specialist  
City of Austin



*The City of Austin is committed to compliance with the Americans with Disabilities Act.  
Reasonable modifications and equal access to communications will be provided upon request.*

