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| THE AUSTIN BULLDOG | § | IN THE DISTRICT COURT |
| <i>Plaintiff,</i> | § | |
| | § | |
| v. | § | |
| | § | |
| LEE LEFFINGWELL, MAYOR, | § | |
| CHRIS RILEY, COUNCIL MEMBER | § | |
| PLACE 1, MIKE MARTINEZ, MAYOR | § | |
| PRO TEM, PLACE 2, RANDI SHADE, | § | 250th JUDICIAL DISTRICT |
| COUNCIL MEMBER, PLACE 3, LAURA | § | |
| MORRISON, COUNCIL MEMBER | § | |
| PLACE 4, BILL SPELMAN, COUNCIL | § | |
| MEMBER PLACE 5, SHERYL COLE, | § | |
| COUNCIL MEMBER, PLACE 6, and the | § | |
| City of AUSTIN | § | |
| <i>Defendants.</i> | § | TRAVIS COUNTY, TEXAS |

**DEFENDANT CITY OF AUSTIN’S OBJECTIONS AND RESPONSES TO
PLAINTIFF’S REQUEST FOR ADMISSIONS**

TO: Plaintiff The Austin Bulldog, by serving its attorney of record, Bill Aleshire, Riggs Aleshire & Ray, P.C., 700 Lavaca St., Suite 920, Austin, Texas 78701.

NOW COMES Defendant City of Austin, pursuant to TRCP 198, and makes the following objections and responses to Plaintiff’s Request for Admissions:

OBJECTIONS AND RESPONSES TO REQUEST FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1: In the copies of written communication provided to the Austin Bulldog in response to Open Records Request No. 1, the Personal Email Address of one or more Austin Council members was redacted (concealed).

RESPONSE: Defendant objects to this request for admission on grounds of vagueness. In most of the communications provided to Plaintiff, there was no personal email address of an Austin City Council Member, either disclosed or redacted. Subject to this objection, Defendant admits that in a limited number of written communications the personal email address of a City Council Member was redacted, as City was instructed to do by the Attorney General of Texas. This practice conforms with the guidance routinely provided by the Attorney General of Texas.

REQUEST FOR ADMISSION NO. 2: One or more of the written communication referenced in Request for Admission 1 (in which the Personal Email Address of one or more Austin Council members was redacted) was a communication related City of Austin business.

RESPONSE: Subject to the objection stated in response to Request for Admission No. 1, admit. The written communications at issue generally related to public information since communications of a wholly personal nature are not within the definition of “public information” under TPIA.

REQUEST FOR ADMISSION NO. 3: In the copies of written communication provided to the Austin Bulldog in response to Open Records Request No. 1, the Personal Email Address of City Manager Marc Ott was redacted (concealed).

RESPONSE: Defendant objects to this Request for Admission on the grounds of burdensomeness and on the basis of the fact that the referenced documents are already in the possession and control of Plaintiff, and so denies. Defendant released an enormous volume of documents to Plaintiff in response to Plaintiff’s first TPIA request, and responding to this request would potentially require Defendant to conduct a new search of those documents to look for a redaction. If Plaintiff will identify the written communication he believes to contain a redacted email address of Defendant Ott, the City will be in a position to admit or deny.

REQUEST FOR ADMISSION NO. 4: One or more of the written communication referenced in Request for Admission 3 (in which the Personal Email Address of City Manager Marc Ott was redacted) was a communication related City of Austin business.

RESPONSE: See objection and response to Request for Admission No. 3. For the reasons there stated, Defendant denies. If Plaintiff will identify the written communication he believes to

contain a redacted e mail address of Defendant Ott, and to related to public business, Defendant will be in a position to admit or deny.

REQUEST FOR ADMISSION NO. 5: Each member of the Austin City Council is the custodian of the records of that Council member's office, including written communication between the Council member and others relating to City of Austin business.

RESPONSE: Defendant objects to this Request for Admission on the grounds of vagueness for the reasons here set out. The term "custodian" is not defined and it is susceptible to different meanings under different statutes and rules. A member of the Austin City Council is not an "officer for public information" of the City of Austin under TPIA, nor is a member of the City Council the "records management officer" for local government records under LGRA. In some situations, the Council member is a "custodian" of public records for purposes of the Texas Rules of Evidence. Since Defendant can neither admit in full nor deny in full the request as written, Defendant denies.

REQUEST FOR ADMISSION NO. 6: On one or more occasions between January 1, 2009 and January 27, 2011, Council Members and the City Manager transmitted or received written communication relating to City of Austin business using the Council Members' or City Manager's Personal Email Address.

RESPONSE: Defendant objects to this Request for Admission as vague and multifarious. Defendant is aware and admits that some of the named Official Capacity Defendants transmitted or received written communications as stated in this Request, but cannot confirm that all of the official capacity Defendants did so as the request implies. Accordingly, Defendant admits in part and denies in part.

REQUEST FOR ADMISSION NO. 7: On one or more occasions between January 1, 2009 and January 19, 2011, Council Members sent or received a written communication using the "SPARK" program (see Exhibit P-1 to Plaintiff's Second Amended Petition).

RESPONSE: Defendant objects to this Request for Admission as vague and multifarious. It is not clear whether Plaintiff is asking whether Defendant admits that some Council Members acted as described, or that all acted as described. Defendant is aware that some Council Members acted as described, and to that extent admits, but cannot confirm that all did. Accordingly, Defendant admits in part and denies in part.

REQUEST FOR ADMISSION NO. 8: Written communications using the "SPARK" program between January 1, 2009 and January 27, 2011 were not retained and cannot be provided in response to Open Records Requests No. 1 or No. 2.

RESPONSE: Admit in part and Deny in part. Some written communications using the “SPARK” program for the identified period were retained and were provided to Plaintiff. Others were not retained and cannot be provided. Spark communications that were not retained in general were incidental communications of no administrative value and not subject to retention under the City’s records retention schedule.

REQUEST FOR ADMISSION NO. 9: After the Austin City Council adopted its resolution on April 7, 2011 regarding conduct of city business through written communication on personal communication devices, all Austin City Council members did not forward to a city email account from their personal email account(s) all written communication dated since January 1, 2009 related to City of Austin business.

RESPONSE: Defendant objects to this Request for Admission as vague and multifarious. As stated, it asks whether “all” City Council Members **did not** forward “all” communications of a certain type between dates. If Defendant were to admit, it would be agreeing to a statement that the Official Capacity Defendants forwarded **none** of the referenced communications after a certain date, which clearly is not the case. Some Official Capacity Defendants did forward to city servers written communications dated since January 1, 2009 related to City business that were the subject of pending TPIA requests. Accordingly, Defendant must deny the Request as written.

Respectfully submitted,



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ATTORNEYS FOR DEFENDANT CITY OF AUSTIN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was sent to:

| | | |
|--|-------------------------------------|---------------------|
| ATTORNEYS FOR PLAINTIFF Bill Aleshire Riggs Aleshire & Ray 700 Lavaca, Suite 920 Austin, TX 78701 | <input checked="" type="checkbox"/> | Regular Mail |
| | <input type="checkbox"/> | Certified Mail, RRR |
| | <input type="checkbox"/> | Federal Express |
| | <input type="checkbox"/> | Hand Delivery |
| | <input type="checkbox"/> | Facsimile |
| | <input checked="" type="checkbox"/> | Electronic Service |

on the 26th day of September, 2012.

James E. Couvar