

THE STATE OF TEXAS	§	IN THE COUNTY
V.	§	COURT-AT-LAW
BILL SPELMAN	§	TRAVIS COUNTY, TEXAS


COMPLIANCE AGREEMENT

The parties to this agreement are the State of Texas, which is represented by the Travis County Attorney or his designated Assistant Travis County Attorney, and **Bill Spelman**.

Bill Spelman agrees to comply with the terms and conditions specified herein. In return, the State of Texas agrees to defer proceedings.



Attorney for Bill Spelman



Bill Spelman

Waiver of Statute of Limitation


Article 12.02 of the Texas Code of Criminal Procedure provides that presentment of an indictment or information for Misdemeanor offenses may be made within two years from the date of any alleged commission of said offense, and not afterward. After consulting with my attorney, I, Bill Spelman, freely, knowingly, and voluntarily waive this right.

For the purposes of this waiver, the relevant date is on or after April 19, 2010 for possible violations under Chapter 551 or 552 of the Texas Government Code for which I am under investigation by the Travis County Attorney's Office.

This waiver is intended to remain in effect for the duration of this agreement. If no charge has been filed against me within 30 days after this agreement ends, this waiver will expire.

I can read and write the English language; I have read this document and discussed it fully with my attorneys; I understand this document completely; and I am aware of the consequences of my waiver. This waiver is not to be considered an admission of guilt to the above-mentioned conduct under investigation. My attorney has discussed with me the law and the facts applicable to this waiver, and I am satisfied that I have been effectively represented.


Attorney for Bill Spelman


Bill Spelman

Acknowledgement of Law

- The Austin City Council is a municipal governing body in Austin, Texas and therefore subject to the Texas Open Meetings Act (Tx. Govt. Code Chapter 551)(hereinafter TOMA).
- The Austin City Council, as a governmental body, is required by law to have every regular, special or called meeting open to the public, unless a closed meeting is otherwise authorized by the TOMA (Tx. Govt. Code § 551.002).
- A quorum of the Austin City Council consists of four (4) or more members.
- TOMA defines a meeting as “[a] deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action;...”
- TOMA defines deliberation as “a verbal exchange during a meeting between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body or any public business.”
- Tx. Govt. Code § 551.143 states that “A member or group of members of a governmental body commits an offense if the member or group of members knowingly conspires to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter.” In interpreting this statute, the Federal District Court for the Western District of Texas stated “[t]hus, a meeting of less than a quorum is not a “meeting” within the Act when there is no intent to avoid the Act’s requirements. On the other hand, the Act would apply to meetings of groups of less than a quorum where a quorum or more of the body attempted to avoid the purposes of the Act by deliberately meeting in groups of less than a quorum in closed sessions to discuss and/or deliberate public business, and then ratifying their actions as a quorum in a subsequent public meeting.” *Esperanza Peace & Justice Ctr. V. City of San Antonio*, 316 F. Supp. 2d 433, 472 (W.D. Tex. 2001) and Op. Tex. Att’y Gen. No. GA-0326 (2005). Op. Tex. Att’y Gen. No. GA-0326(2005).
- Texas courts and the Attorney General of Texas have ruled that a governmental body can violate TOMA when it "deliberates through a series of closed meetings of members of less than a quorum." Op. Tex. Att'y Gen. No. DM-95 (1992); See also *Esperanza Peace & Justice Ctr. v. City of San Antonio*, 316 F. Supp. 2d 433, 472 (W.D. Tex. 2001) and Op. Tex. Att'y Gen. No. GA-0326 (2005).

- The Attorney General has ruled that electronic communications can, “depending on the facts of a particular case, constitute a deliberation and a meeting for purposes of the Texas Open Meetings Act.” Op. Tex. Att’y Gen. No. GA-0896 (2011). Courts have stated that Attorney General Opinions are highly persuasive and are entitled to great weight. However, the ultimate determination of laws applicability, meaning, or constitutionality is left to the courts.
- Tx. Govt. Code § 551.144 states that “A member of a governmental body commits an offense if a closed meeting is not permitted under this chapter and the member knowingly: (1) calls or aids in calling or organizing the closed meeting, whether it is a special or called closed meeting; (2) closes or aids in closing the meeting to the public, if it is a regular meeting; or (3) participates in the closed meeting, whether it is a regular, special, or called meeting.”

Affirmations

Bill Spelman affirms that the following statements are true and accurate:


- Bill Spelman is a member of the Austin City Council.
- In June 2009, when Bill Spelman began his term on Austin City Council, there was an existing practice of systematically scheduling private one-on-one meetings between the six members of the City Council and the Mayor for the purpose of discussing items on that week’s City Council agenda, as well as other city business. By attending three or more of these one-on-one meetings in the days before an Austin City Council meeting, all members of the Austin City Council and the Mayor met with each other City Council member and discussed city business. As an elected member of the City Council Bill Spelman continued this practice. Between June 2009 and August 2010 Bill Spelman met with each other City Council member in a series of one-on-one meetings to discuss city business before City Council meetings. Beginning in August 2010, Mayor Lee Leffingwell modified his practice of one-on-one meetings with Council Members and began meetings with the other Council Members in a series of longer two-on-one meetings. Mayor Lee Leffingwell stated in an e-mail to each council member, “Because we are often rushed in these meetings, and sometimes barely get through even a cursory review of the agenda, I’d like to try moving to 1-hour “2-on-1” meetings with you and another Council member.” The two-on-one meetings continued through February 2011 and were a continuation of the practice of routinely meeting with each other City Council member to discuss city business before City Council meetings.
- The aforementioned meetings or one-on-one’s were calendared on the Mayor’s and each Member’s public calendar. A number of these were posted on the internet. There was no attempt to hide them nor keep them a secret.

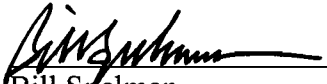
- On August 25, 2009, September 14, 2009, and October 1, 2009, Bill Spelman sent e-mails about Water Treatment Plant #4 to Lee Leffingwell, Sheryl Cole, Mike Martinez, Laura Morrison, Randi Shade, and Chris Riley with a power point presentation attached explaining why Water Treatment Plant #4 was not needed.
- On September 19, 2009, Bill Spelman received an e-mail from Lee Leffingwell warning him that sending an e-mail to a quorum of Council members is a potential violation of the Texas Open Meetings Act.
- On February 24, 2010, Bill Spelman met with Mike Martinez to discuss the prioritization of the GO Housing Bonds. During the City Council meeting on February 25, 2010, Bill Spelman sent an e-mail to Sheryl Cole, Laura Morrison, Mike Martinez, Randi Shade, Chris Riley, and Lee Leffingwell with his thoughts on how the remaining GO bond funds should be allocated. Spelman attached a spreadsheet to the e-mail advocating his position. Mike Martinez replied to Bill Spelman, Sheryl Cole, Laura Morrison, Randi Shade, Chris Riley, and Lee Leffingwell. Sheryl Cole replied to Bill Spelman asking him what he thought the split in funding should be.
- Randi Shade wrote a confidential memorandum to Marc Ott from herself, cc'ing Mayor Leffingwell and Bill Spelman. The memorandum was about Marc Ott's performance as Austin City Manager. Randi Shade e-mailed the memorandum to Bill Spelman at his UT account on June 27th and told Spelman that she would share the memorandum with Laura Morrison to get her feedback. Phone records indicate that Laura Morrison called Bill Spelman on June 27th at 7:18 p.m. and they spoke for approximately twenty-four minutes. On June 28, 2010, Bill Spelman met with City Manager, Marc Ott, Lee Leffingwell, and Randi Shade. In a June 28, 2010 text message to Sheryl Cole, Laura Morrison said that she talked to Bill Spelman and Bill Spelman said no specific deal had been given.
- Bill Spelman sent a text message to Laura Morrison on July 29, 2010 at 12:54 p.m. and said, "L, Chris & Randy want to offer Sanders \$500K in pvt. Loewy, of course, will make it public, If can't get \$500, both will vote no on \$750. Heads up. Must stop. B" Phone records show that Bill Spelman called Sheryl Cole on June 29, 2010 at 12:58 p.m.
- Mike Martinez, Randi Shade, and Bill Spelman co-sponsored a historic landmark resolution in August of 2010. On August 4, 2010, Mike Martinez met with Bill Spelman and Randi Shade to discuss the terms of the resolution. Sheryl Cole's agenda notes from the August 5, 2010 City Council meeting indicated that she talked to Spelman about the resolution.
- Bill Spelman's Budget Worksheet for Fiscal Year 2010-2011 contained handwritten notes that indicated that he spoke to Chris Riley, Laura Morrison, Sheryl Cole, and Mike Martinez about details of the budget. Bill Spelman met with Mike Martinez and Randi Shade on September 1, 2010 to discuss the budget.

Spelman met with Chris Riley on September 2, 2010 about the budget. He also met with Lee Leffingwell on September 3rd to discuss the budget. A text sent from Laura Morrison to Sheryl Cole on September 3rd indicated that Laura Morrison had discussed ERGSO Austin Energy cuts with Bill Spelman.

- Bill Spelman affirms that he complied fully with the Travis County Attorney's February 2, 2011 Open Records Request.
- Bill Spelman affirms that he complied fully with the Grand Jury Subpoena issued by the Travis County Attorney's Office on August 16, 2011.
- Bill Spelman affirms that he has completed and filed with the Clerk his personal financial statement for Fiscal Year 2011-2012.
- Bill Spelman affirms that he has turned over to the City of Austin all city owned records and documents inclusive of electronic communications conducted on non-city accounts that concern city business.

I hereby affirm that the foregoing statements are true and correct. I maintain that I never violated or conspired to violate the Texas Open Meetings Act. This compliance agreement is the result of an honest disagreement between the County Attorney's Office and Bill Spelman as to both the law governing the Texas Open Meetings Act and facts as applicable to the County Attorney's Office investigation to determine whether any violations of the Act have occurred. It does not constitute an admission of guilt by Bill Spelman to any possible offense. It is a good faith effort by both parties to resolve the County Attorney's Office investigation, and in consideration of the County Attorney's legitimate effort to enforce the Open Meetings Act and Bill Spelman's efforts to ensure that even the potential for appearance of impropriety is avoided by implementing best practices related to transparency and open government.


Attorney for Bill Spelman


Bill Spelman

Recognition of Facts Considered by the County Attorney's Office

In addition to considering information discovered during the course of the County Attorney's investigation into violations of the Texas Open Meetings Act committed by the City of Austin and individual members of Austin City Council, the County Attorney takes the following into consideration:

- The Austin City Council deals with topics of high public interest and engages in numerous hours of public debate and discussion covered by the

media. Regularly scheduled City Council meetings are posted and broadcast live.

- Bill Spelman completed the Attorney General's Open Meetings Act training video and subsequently filed the certificate of completion with the City Clerk's Office.
- Despite the fact that individual one-on-one meetings not otherwise prohibited under TOMA §551.143 are not per se illegal, to avoid any potential appearance of impropriety Bill Spelman discontinued the practice of scheduling one-on-one meetings and on February 9, 2011 the Austin City Council began holding public work sessions prior to City Council meetings.
- On April 7, 2011, Bill Spelman voted in favor of Resolution 20110407-014, requiring all future city business to be conducted on city accounts. In addition, the resolution required council members to promptly forward electronic communications regarding city business received on non-city accounts to the city account.
- Bill Spelman affirms that he complied fully with the Travis County Attorney's February 2, 2011 Open Records Request.
- Bill Spelman affirms that he complied fully with the Grand Jury Subpoena issued by the Travis County Attorney's Office on August 16, 2011.
- Bill Spelman affirms that he has completed and filed with the Clerk his personal financial statement for Fiscal Year 2011-2012.
- Bill Spelman affirms that he has turned over to the City of Austin all city owned records and documents inclusive of electronic communications conducted on non-city accounts that concern city business.
- Over the course of this investigation, it has become a concern that the organizational structure, internal culture, and professional development of the City of Austin's management, including the City Manager's Office and City Legal Department, was not conducive to facilitating proper understanding and adequate training to ensure compliance with the Texas Open Meetings Act by members of the Austin City Council.

The City of Austin's New Initiatives in Open Government

- The Austin City Council requested that the City Manager implement a policy similar to Resolution 20110407-014 regarding the use of non-city accounts. Subsequently, the City Manager issued Administrative Bulletin

08-06 requiring all city employees to follow a policy that is substantially similar to the one created by the city council.

- The City of Austin created a team of senior advisors to review the City's practices regarding ethical and legal obligations. This team made recommendations that would enhance compliance and oversight, and streamline the process for public information requests. Additionally, the City created a single point of contact in each council member's office on open government issues.
- The City of Austin's Ethics and Integrity office became a part of the City's law department with a newly created executive level position to oversee and ensure compliance with the Texas Public Information Act and the Texas Open Meetings Act.
- The City of Austin has hired a full time records analyst to work with the Austin City Council on records management.

Duration of Agreement

This agreement begins when this document is executed in its entirety by all parties and this agreement lasts for two (2) years.

Agreement to Specified Terms and Conditions

Bill Spelman must timely provide proof of completion of all terms and conditions, by U.S. postage-prepaid mail, facsimile transmission, email, or hand delivery to:

Street Address
Travis County Attorney's Office
Ned Granger Admin. Bldg.
Austin, Texas 78701

Mailing Address
Travis County Attorney's Office
Attn: Mack Martinez, Assistant County
Attorney
Post Office Box 1748
Austin, Texas 78767-1748

- Bill Spelman agrees that he will continue to cooperate with the Travis County Attorney's Office investigation into alleged Texas Open Meetings Act violations by the Austin City Council.
- Bill Spelman agrees to testify completely and truthfully before any Grand Jury, the Court and/or Jury at any proceeding, hearing, or trial if called upon to do so by an attorney with the County Attorney's Office regarding alleged violations of the Texas Open Meetings Act by past or present Austin City Council members.

- Bill Spelman shall provide proof that he has completed a Texas Open Meetings Act training course and a Public Information Act training course, both available through the Texas State Attorney General's office, within twelve months of the date this agreement is signed.
- Bill Spelman shall direct all members of his staff to complete a Texas Open Meetings Act training course and a Public Information Act training course, both available through the Texas State Attorney General's office, within twelve months of the date this agreement is signed.
- Bill Spelman agrees to continue to comply with the City of Austin's Records Retention Rules under Chapter 2-11 of the Austin City Code and Local Government Code § 203.041.
- Bill Spelman agrees to continue to comply with the Public Information Act, Texas Government Code Chapter 552 and the Local Government Records Act, Texas Local Government Code Chapter 201 by providing the City of Austin any public information that Bill Spelman possesses that the city does not also possess, either immediately or at the time of a relevant public information request.
- Bill Spelman agrees to continue to comply with City Council Resolution 20110407-014, requiring all future city business to be conducted on city accounts and requiring council members to promptly forward electronic communications regarding city business received on non-city accounts to the city account.
- Bill Spelman agrees to direct his staff to comply with the requirements of City Council Resolution 20110407-014.

Consequences of Non-Compliance with or Violation of the Terms and Conditions of This Agreement

If Bill Spelman fails to comply with, or violates, any of the specified terms and conditions of this agreement, the Travis County Attorney is no longer subject to the agreement and may proceed with charges alleging that Bill Spelman committed a violation under Chapter 551 or 552 of the Texas Government Code and may prosecute the cases to the full extent of the law.

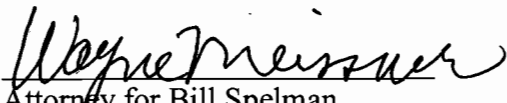
Bill Spelman hereby agrees to the following if the Travis County Attorney files the charges:

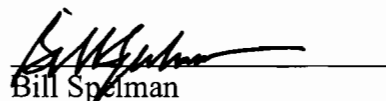
Bill Spelman agrees and stipulates that this agreement, including the written affirmations that it contains, is admissible against him in court.

Bill Spelman agrees and stipulates that all business records affidavits, documents, and electronic communications provided to the Travis County Attorney's office by Bill Spelman or by the City of Austin on behalf of Bill Spelman are admissible against Bill Spelman at trial and in court.

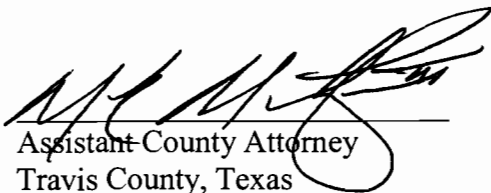
The Travis County Attorney's burden of showing Bill Spelman's non-compliance with this agreement is by a preponderance of the evidence.

I, Bill Spelman, have fully discussed this agreement, the waivers herein, and the allegations against me with my attorney. I am satisfied that he has properly represented me. I have received a copy of this Compliance Agreement and I understand that this agreement and its contents may be made public


Attorney for Bill Spelman


Bill Spelman

Date: 10-16-2012


Assistant County Attorney
Travis County, Texas

THE STATE OF TEXAS

COUNTY OF TRAVIS

EXTENSION OF THE STATUTE OF LIMITATIONS WAIVER

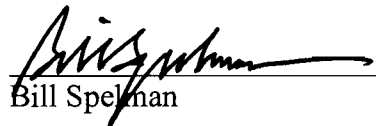
WHEREAS, the Travis County Attorney's Office is investigating potential violations of the Texas Open Meetings Act by all the members of the Austin City Council; and

WHEREAS, Bill Spelman is a member of the Austin City Council; and

WHEREAS, Bill Spelman signed a 180 day waiver of the statute of limitations for alleged violations under Chapter 551 or 552 of the Texas Government Code on April 19, 2012 (attached hereto); and

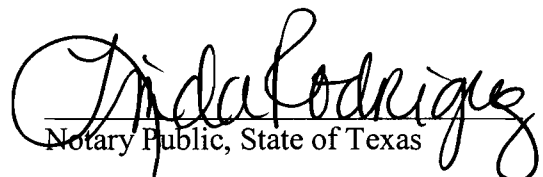
WHEREAS, both parties desire to extend said waiver to allow both parties to continue to work towards a resolution of the Travis County Attorney's Office investigation;

I HERETOFOR EXTEND THE ATTACHED WAIVER OF THE STATUTE OF LIMITATIONS FOR A PERIOD OF 4 DAYS FROM TODAY'S DATE TO EXPIRE ON OCTOBER 19, 2012.


Bill Spelman

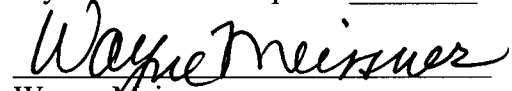
Sworn to and subscribed before me on the 16 day of October, 2012




Notary Public, State of Texas

Notary's Printed Name

My Commission Expires: _____


Wayne Meissner
Attorney for Bill Spelman



DAVID A. ESCAMILLA
COUNTY ATTORNEY

RANDY T. LEAVITT
FIRST ASSISTANT

JAMES W. COLLINS
EXECUTIVE ASSISTANT



314 W. 11TH STREET
GRANGER BLDG., SUITE 300
AUSTIN, TEXAS 78701

P.O. BOX 1748
AUSTIN, TEXAS 78767

(512) 854-9415
FAX: (512) 854-9316

THE STATE OF TEXAS

COUNTY OF TRAVIS

DEFENDANT'S WAIVER OF STATUTE OF LIMITATIONS

After consulting with my attorney, I, Bill Spelman, freely, knowingly, and voluntarily waive my right under Article 12.02 of the Texas Code of Criminal Procedure to presentment of an indictment or information for Misdemeanor offenses within two years of the commission date.

For the purposes of this waiver, said commission date is on or after April 4, 2010 and could constitute violations under Chapter 551 or 552 of the Texas Government Code for which I am under investigation by the Travis County Attorney's Office.

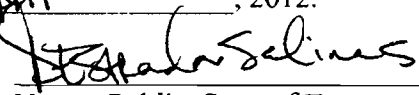
This waiver is intended to remain in effect for only 180 days after the date of my signature below. If no charge has been filed against me within that time period, this waiver will expire.

I can read and write the English language; I have read this document and discussed it fully with my attorneys; I understand this document completely; and I am aware of the consequences of my waiver. This waiver is not to be considered an admission of guilt to the above-mentioned conduct under investigation. My attorney has discussed with me the law and the facts applicable to this waiver, and I am satisfied that I have been effectively represented.

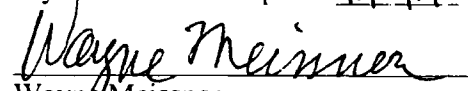

Name

Sworn to and subscribed before me on the 19th day of April, 2012.




Notary Public, State of Texas

Deena Estrada Salinas
Notary's Printed Name
My Commission Expires: 11/19/14


Wayne Meissner
Attorney for Bill Spelman