

THE STATE OF TEXAS

§

IN THE COUNTY

v.

§

COURT-AT-LAW

CHRIS RILEY

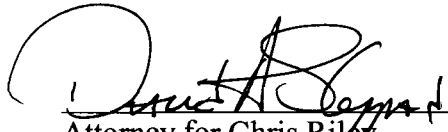
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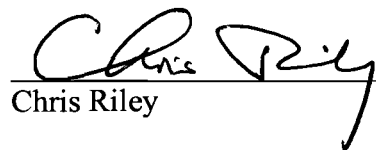
TRAVIS COUNTY, TEXAS

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 **Chris Riley**.

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


Attorney for Chris Riley


Chris Riley

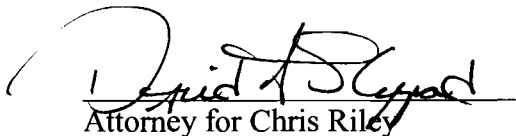
Waiver of Statute of Limitation

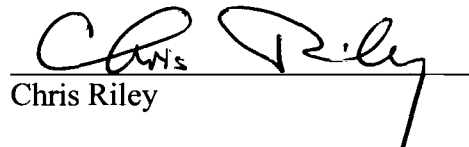
Article 12.02 of the Texas Code of Criminal Procedure provides that presentment of an indictment or information for Misdemeanor offenses may be made within two years from the date of any alleged commission of said offense, and not afterward. After consulting with my attorney, I, Chris Riley, freely,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

For the purposes of this waiver, the relevant date is on or after May 2, 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 Chris Riley


Chris Riley

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

Chris Riley affirms that the following statements are true and accurate:

- Chris Riley is a member of the Austin City Council.
- In June 2009, when Chris Riley 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 Chris Riley continued this practice. Between June 2009 and August 2010 Chris Riley 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 February 8, 2010, Chris Riley met with Sheryl Cole and Mike Martinez to discuss the prioritization of the remaining GO housing bond. On February 25, 2010, Chris Riley, Sheryl Cole, and Randi Shade had an on-going e-mail conversation about the GO Housing Bond. On February 25, 2010 Bill Spelman also sent an e-mail to Chris Riley, Sheryl Cole, Mike Martinez, Lee Leffingwell, Laura Morrison, and Randi Shade advocating his position on the GO bond allocation with an attached spreadsheet.
- Chris Riley, Lee Leffingwell, and Randi Shade were the co-sponsors of the transportation bond resolution on the March 25, 2010 City Council Agenda. A March 25, 2010 e-mail from Morrison shows that she discussed the particular language of the resolution with Chris Riley on March 24th, 2010.
- On September 2, 2010, Chris Riley met with Bill Spelman to discuss the Budget for FY 2010-2011. Handwritten notes from Bill Spelman's budget worksheet indicate that he spoke to Chris Riley in detail about the budget and that Chris Riley was going to talk to Randi Shade about funding a staff position to support community gardens. On September 3, 2010, Laura Morrison sent a text message to Sheryl Cole indicating that she had talked to Chris Riley about the budget. Phone records show that Morrison called Chris Riley that morning at 9:29 a.m.
- On Thursday, September 23, 2010, City Council was voting on the Brackenridge Tract. That day Chris Riley forwarded an e-mail from a constituent to Lee Leffingwell and Randi Shade arguing for changes to the language of the item. Later Riley e-mailed the constituent back saying that they may be able to fix part of the resolution. Minutes later he forwarded the e-mail response from the same constituent to Randi Shade and Mike Martinez.
- On July 28, 2010, Mike Martinez forwarded an e-mail he received from Fred Hawkins to Chris Riley, Sheryl Cole, Bill Spelman, Laura Morrison, Lee Leffingwell, and Randi Shade. Mr. Hawkins is a former city attorney and the e-mail was his argument as to why the city should not settle in *Nathaniel Sanders, Sr., et al. v. Leonardo Quintana and the City of Austin*, No. A09-CA-00426 SS.
- In May of 2009 an Austin Police Department officer shot and killed Nathaniel Sanders III. As a result of this shooting, on June 2, 2009, Mr. Sanders' family sued the officer involved in the shooting and the City of Austin. (Nathaniel Sanders, Sr., et al. v. Leonardo Quintana and the City of Austin, No. A09-CA-00426 SS, in the United States District Court for the Western District of Texas, Austin Division). The lawsuit was listed on the Austin City Council Agenda numerous times between May of 2009 and its resolution in June of 2011. During the time the case was pending the Austin City Council considered settling with the Sanders family. On September 30, 2010, Randi Shade sent an e-mail from her non-city account to Lee Leffingwell, Chris Riley, and Mike Martinez on their non-city accounts. Her e-mail discussed how the city ought to respond publicly to a settlement offer from the Sanders' attorney. Shade stated that the family's

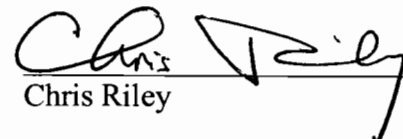
position indicated that he was interested in something other than helping the Sanders family. She went on to suggest that “talk of legal principles, responsibility to taxpayers, etc. seems counterproductive.” Lee Leffingwell replied all to the e-mail on September 30th to add that he was in agreement as long as “Dan goes forward with the request for sanction along with his initial request for summary dismissal.” Randi Shade replied all to Lee Leffingwell’s e-mail on September 30th continuing the discussion. Lee Leffingwell replied all on October 1, 2010 and stated that he agreed with taking the high road, and that he did not believe the city would be wasting money going to trial because the probability of a loss was miniscule. Chris Riley received all of the e-mails debating how the city should respond to the lawsuit.

- On January 23, 2011, Mike Martinez e-mailed Randi Shade, Chris Riley, and Lee Leffingwell and proposed ideas for a Molly Ivins tribute. Randi Shade replied to Mike Martinez, Chris Riley, and Lee Leffingwell that same day and made additional suggestions for a tribute. Mike Martinez replied all to Randi Shade’s e-mail. Then Lee Leffingwell replied all with his suggestions. Chris Riley never responded to the e-mails but received the entire chain of e-mails. All emails were sent and received on non-city e-mail accounts.
- Chris Riley affirms that he complied fully with the Travis County Attorney’s February 2, 2011 Open Records Request.
- Chris Riley affirms that he complied fully with the Grand Jury Subpoena issued by the Travis County Attorney’s Office on August 16, 2011.
- Chris Riley affirms that he has completed and filed with the Clerk his personal financial statement for Fiscal Year 2011-2012.
- Chris Riley 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 Chris Riley 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 Chris Riley to any alleged 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 Chris Riley’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 Chris Riley



Chris Riley

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.
- Chris Riley 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 Chris Riley 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, Chris Riley 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.
- Chris Riley affirms that he complied fully with the Travis County Attorney's February 2, 2011 Open Records Request.
- Chris Riley affirms that he complied fully with the Grand Jury Subpoena issued by the Travis County Attorney's Office on August 16, 2011.
- Chris Riley affirms that he has completed and filed with the Clerk his personal financial statement for Fiscal Year 2011-2012.

- Chris Riley 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

Chris Riley 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

Mailing Address

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

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

- Chris Riley agrees that he will cooperate with the Travis County Attorney's Office investigation into alleged Texas Open Meetings Act violations by the Austin City Council.
- Chris Riley agrees to testify completely and truthfully before any Grand Jury, 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.
- Chris Riley 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.
- Chris Riley 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.
- Chris Riley 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.
- Chris Riley 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 Chris Riley possesses that the city does not also possess, either immediately or at the time of a relevant public information request.
- Chris Riley 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.
- Chris Riley 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 Chris Riley 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 Chris Riley 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.

Chris Riley hereby agrees to the following if the Travis County Attorney files the charges:

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

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

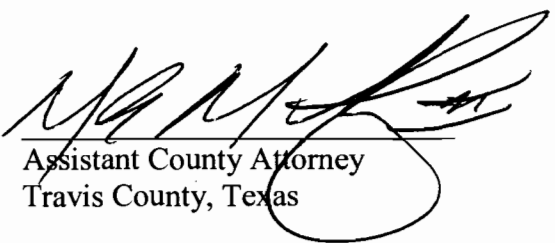
The Travis County Attorney's burden of showing Chris Riley's non-compliance with this agreement is by a preponderance of the evidence.

I, Chris Riley, 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 Chris Riley


Chris Riley

Date: 10/17/12


Assistant County Attorney
Travis County, Texas