

CAUSE NO. D-1-GN-11-000639

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

**PLAINTIFF’S FIRST AMENDED PETITION**

COMES NOW, Plaintiff, The Austin Bulldog, who files this First Amended Petition, and in support thereof would show as follows:

**SUMMARY OF THE CASE**

1. a. The Austin Bulldog asks the Court to order Austin officials to step out into the “Sunshine” of open government and stop hiding official correspondence in the shadows by using their personal email accounts, phone accounts, and a City sponsored secret-message system called “SPARK” to conduct city business. SPARK is described by a City employee as “a chatting application” to conceal constituent communications “that would not be appropriate for all of us to enjoy in The Statesman the next day.” The Austin Bulldog requested copies of all written communication between Austin City Council members in 2010. Instead of “promptly” producing the requested records as required by the TPIA, the Defendants delayed for 33 days and then provided only some of the requested emails that were located on city-owned computers. The City did not produce any copies of written communication from the SPARK system. The

Council members each violated records management laws by not turning these records over to the City so the City could comply with the TPIA. In violation of the public's right to these records, the City withheld local government records (emails and text messages) that Council Members created using the City's SPARK system or using email and text accounts the Council members personally control.

b. It appears that Austin Council Members, who think they can individually decide which emails and text messages about public business the public can see, need to be reminded of the reason this State has a public information act:

POLICY; CONSTRUCTION. (a) Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. The provisions of this chapter shall be liberally construed to implement this policy.

Tex. Gov't Code (TPIA) section 552.001 (emphasis added)

c. Discovery in this case should be conducted under Level 2, TRCP 190.3.

## 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. Mayor Pro Tem Martinez has been served.

(4) Randi Shade is sued in her official capacity as Austin Council Member Place 3 and as the custodian of records created or received by her in the transaction of public business. Council Member Shade has been served.

(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. Council 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 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. Council Member 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.

#### **JURISDICTION & VENUE**

4. This Court has jurisdiction to issue the requested injunctive relief pursuant to Tex. Civ.

Prac. & Rem Code section 65.021. This Court has jurisdiction to issue the mandamus relief requested under the Texas Public Information Act, Government Code Section 552.321. In this case, it is appropriate to use the procedural mechanism of the Uniform Declaratory Judgments Act, Chapter 37 of Tex. Civ. Prac. & Rem Code. In a suit against the City of Austin and members of the Austin City Council, venue is mandatory in District Court in Travis County.

### FACTS

5. Based on hard evidence and on good-faith belief, The Austin Bulldog asserts that the Austin Mayor, Council Members, and City employees routinely transact public business via email, text messages, and SPARK messages using both City-provided communication systems and personal communication systems<sup>1</sup> controlled personally by City officials and employees.

a. There is some evidence that one or more Austin officials deliberately use their private email accounts to try to keep substantive communications from being available to the public through the City's computer servers. For example, in one case, a Council Member asked a constituent to switch over to the Council Member's personal email address to continue discussing the controversial—and obviously public business—topic of tax subsidies for The Domain shopping center.

b. Without a doubt, the SPARK secret message system was established to avoid retention of certain public records and the public disclosure of this method of correspondence with Council members *regardless of the content of such messages*. After pointing out that “all emails sent to your City of Austin address are discoverable and subject to open records requests,”

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<sup>1</sup> As used in this pleading, “Personal Communication System” means any device, computer program, or web-based system such as Gmail, Yahoo, AOL, Roadrunner, or other e-mail/chat programs (including the City's SPARK software) used to create Correspondence that is not directly collected, assembled, or maintained in the records of the City of Austin.

the city staff instructions for the use of SPARK includes the comment, "...be sure to disable the 'chat history' function" so the SPARK messages will not be saved for public disclosure and provided instructions for how to "delete all previous conversations." Exhibit 1. It should be noted that Council Member Laura Morrison declined to use SPARK for this very reason.

6. a. These public-business communications are "local government records." The Local Government Records Act (LGRA) section 201.003(8) defines a "local government record" without regard to whether the record was created on government-provided communication systems or on personal communication systems controlled by public officials and employees. If a city official or employee creates or receives a record in the transaction of public business, it's a "local government record." (Tex. Local Gov't Code section 201.003(8) defining a "local government record" as "any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business. (emphasis added).

b. And these emails, text messages, and SPARK messages are classified as "correspondence" that, by law, must be retained by the City for a minimum of 5 years (if "pertaining to the formulation, planning, implementation, modification, or redefinition of the policies, programs, services, or projects" of the City) or a minimum of 2 years (if "pertaining to or arising from the routine administration or operation of the policies, programs, services, and projects" of the City. (See State's Minimum Records Retention Schedule GR for local governments, section 1000.26; Austin Records Control Schedule for COA Record Series Nos.

GAR-02-20A, GAR02-05A).

7. But Austin government records—created or received via the personal communication systems or SPARK—are being withheld from public disclosure by Austin officials and employees who unlawfully exercise exclusive personal possession of these records and who fail or refuse to turn these records over to the Austin Records Management Officer for inclusion in the City’s records management system. *See* Tex. Local Gov’t Code section 202.008. Once these records are in the City’s records management system, they are easily available to the public under the TPIA.

8. a. On January 19, 2011, The Austin Bulldog filed an open records request addressed to and served directly to each of the Defendant Records Custodians (the Mayor and Council Members) and the City of Austin for:

E-mails, letters, memoranda, notes, or other forms of written communication from you to (or copied to, or blind copied to) any council member(s) or the Mayor or the City Manager from January 1, 2010 to the date of this request. This request includes all such written communication regardless of whether other persons also were sent the communication. 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 or Local Government Code, Title 6, Subtitle C.

(Exhibit P-2)

b. On January 27, 2011, The Austin Bulldog requested the same records for the time period from January 19, 2011 to January 27, 2011.

9. On February 22, 2011, the City of Austin, through the City Attorney’s Office, notified The Austin Bulldog that records had been collected pursuant to both requests and were ready to be picked up. In that notice, the City said:

Please note that the documents provided in response to your request do not include any information that is not assembled, collected, or maintained by the City of Austin as public information. The City is not providing any emails or

other forms of communication not created on city-owned equipment. The City does not have access to any city official's personal cell phone or personal computer.

(Exhibit P-3, emphasis added).

The City's notice did not mention SPARK.

10. a. By law, the Mayor and each Council Member is the custodian of the emails, text messages, and SPARK messages involved in the transaction of public business of their individual offices that were withheld from the response to The Austin Bulldog's request. These Defendant Records Custodians asked or permitted the City Attorney to feign "the City's" inability to get access to these local government records even though these public records are in the possession and control of the Austin Mayor and Council Members.

b. LGRA Section 201.003(2) defines Custodian. ("Custodian" means the appointed or elected public officer who by the state constitution, state law, ordinance, or administrative policy is in charge of an office that creates or receives local government records."). In addition, Austin's Records Management Ordinance, City Code section 2-11-1(b)(1), specifically names the "city councilmember's office" as a "Department" subject to the Ordinance and defines, in 2-11-1(b)(2), a "Department Director" to include "the officer...in charge of a department." City Code section 2-11-6(B)(2) requires the councilmember to "maintain the department's records in accordance with the records management plan."

11. a. Instead of turning over these City records, to be maintained in accordance with the City's records management plan, the Mayor and Council Members "alienated" these local government records, i.e., they claimed exclusive personal title and possession over these records that pertain to public business. In doing so, they exceed their authority and engage in unlawful conduct. A public official can be ordered by the Court to cease violating the law.

b. Because these public records do not belong exclusively to the Mayor or Council Members even though they wrote them using their personal communication systems, these records are “public information” under the TPIA.

(1) *See* Tex. Local Gov’t Code section 201.005 (“DECLARATION OF RECORDS AS PUBLIC PROPERTY; ACCESS. (a) Local government records created or received in the transaction of official business ... are declared to be public property and are subject to the provisions of this subtitle and Subchapter J, Chapter 441, Government Code. (b) A local government officer or employee does not have, by virtue of the officer's or employee's position, any personal or property right to a local government record even though the officer or employee developed or compiled it.”) (emphasis added).

(2) These public records were created by City officials and employees in the course of them performing their official duties (in other words, “for” the City). Since the City owns these records, pursuant to the LGRA section 201.005, the City has a right of access to these records. *See* Tex. Local Gov’t Code section 201.009 (“Local government records are subject to Chapter 552, Government Code [the TPIA]”); Tex. Local Gov’t Code section 203.021 (duty of City Council to establish and maintain a records management program); Tex. Local Gov’t Code section 202.005(a) (“The governing body may demand and receive from any person any local government record in private possession created or received by the local government the removal of which was not authorized by law”). The TPIA defines “public information” to include records collected, assembled, or maintained in connection with the transaction of official business “... for a governmental body and the governmental body owns the information or has a right of access to it.” Tex. Gov’t Code section 552.002(a)(2).

c. It is a violation of the Local Government Records Act, section 202.008 for a



public officer, including the Council members, to destroy or fail to deliver records as required by the Act. Destroying (by automatically deleting or not saving) SPARK messages that are included in the definition of “local government records” violates the law. (Local Gov’t Code, section 202.008 (“PENALTY: DESTRUCTION OR ALIENATION OF RECORD. An officer or employee of a local government commits an offense if the officer or employee knowingly or intentionally violates this subtitle or rules adopted under it by destroying or alienating a local government record in contravention of this subtitle or by intentionally failing to deliver records to a successor in office as provided by Section 201.006(a). An offense under this section is a Class A misdemeanor.”).

d. It is also a violation of the Local Government Records Act, section 202.009 for an individual, including the Council members, to *possess* a government record without complying with the Act. (Local Gov’t Code, section 202.009(a) (“PENALTY: POSSESSION OF RECORD BY PRIVATE ENTITY. (a) A private college or university, a private museum or library, a private organization of any other type, or an individual commits an offense if the entity knowingly or intentionally acquires or possesses a local government record. An offense under this subsection is a Class A misdemeanor.”).

12. The Austin Bulldog also challenges whether the City of Austin even provided all of the requested documents created or received on the *City computers* during the time period from January 1, 2010 to January 27, 2011. First, the City’s response to The Austin Bulldog’s request does not reveal the existence of, let alone provide a copy of SPARK messages between Council Members or the City Manager. To believe that the City provided all of the requested emails, one would have to believe that not a single email was sent between Council Members on some very controversial issues during 2010, such as Water Treatment Plant No. 4 or the Formula One

Racetrack incentives. To believe that the City complied with the TPIA, one would have to believe that Council Member Spelman sent only 3 emails to his colleagues during the one-year-and-27-day period. Only 10 pages of emails were provided in the documents from Council Member Martinez's office; none of which were from 2010. And despite notice to the City Attorney on February 23<sup>rd</sup> by counsel for The Austin Bulldog that it appeared that Council Member Martinez's response was deficient, no supplemental response to The Austin Bulldog has been received. And while Council Member Shade's office provided 686 pages of emails, the Mayor of Austin provided only 94 pages of emails for 2010.

13. Despite withholding these records, neither the City of Austin nor any of the Defendant Records Custodians requested a ruling from the Texas Attorney General to withhold these records as required by TPIA section 552.301(a) ("A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception...").

### **CAUSES OF ACTION**

#### COUNT 1 – Order Records Custodians to File Government Records with the City

14. Pursuant to the terms of the Local Government Records Act (LGRA) and their own Austin City Code, as a records Custodian, each Defendant City Council Members has a ministerial duty to turn over to the City Records Management Officer, Shirley Gentry, the local government records created or received by the Council Members—whether on their personal communication systems, or the City's communication systems—so those records can be maintained under the terms of the LGRA and can become available for public disclosure under the terms of the TPIA. In addition, the Defendant Records Custodians lack any authority to

exclusively possess these local government records. The actions of the Defendant Records Custodians violated The Austin Bulldog's right of access to these records under the TPIA.

15. a. The Austin Bulldog asks the Court to issue appropriate writs of mandamus to require the Defendant Records Custodians to deliver to the City of Austin Records Management Officer the local government records in their possession or control for the time period required, in Records Retention Schedules, for such records to be maintained by the City.

b. The Austin Bulldog also asks the Court to issue a permanent injunction prohibiting the Defendant Records Custodians, their successors in office and the employees of the City of Austin, from withholding from the Austin Records Management Officer the local government records created or received by Austin officials or employees, including those government records created or received on personal communication systems.

#### COUNT 2 – Mandamus to Provide Public Records

16. Defendant City and Council-Member Custodians violated The Austin Bulldog's right under the TPIA—without requesting a ruling by the Attorney General—when the Defendants denied The Austin Bulldog copies of emails, text messages, and SPARK messages written between the Council members or with the City Manager. Under the TPIA, emails about public business, including such emails created or received on the Council Member's personal communication system, are "public information" subject to public disclosure. So are SPARK messages.

17. The Austin Bulldog asks the Court to issue a writ of mandamus requiring the City of Austin to exercise its ownership rights and right of access to these records, pursuant to the Local Government Records Act (including section 202.005), to obtain the local government records, referenced above, from the Defendant Records Custodians. The Austin Bulldog asks the Court to

order the City of Austin, upon receipt of such documents, to “promptly” provide copies of those records to The Austin Bulldog pursuant to the terms of the Texas Public Information Act.

18. Upon obtaining evidence in discovery, The Austin Bulldog expects to prove that “local government records” (specifically emails and SPARK messages) created or received on the City computer servers—that are required by the Local Government Records Act and related state rules to be retained for a minimum of 5 years or 2 years—either were not provided as required by the TPIA or were unlawfully deleted from the server or otherwise made unavailable for public inspection.

### **ATTORNEY FEES**

19. Plaintiff has retained legal counsel to enforce its rights under the Texas Public Information Act. Plaintiff asks the Court to order the Defendants to pay reasonable and necessary attorney fees and costs to Plaintiff, pursuant to Tex. Gov’t Code section 552.323 and the Uniform Declaratory Judgments Act, Chapter 37 of Tex. Civ. Prac. & Rem Code.

### **PRAYER**

For these reasons, Plaintiff, The Austin Bulldog, requests that the Defendants be cited to appear and answer and that the Court:

a. order the Defendant Austin Mayor and City Council Members (and their successors in office) to turn over the local government records (that Defendants created or received on Defendants’ personal communication systems) to the Austin Records Management Officer for the time period required by Records Retention Schedules for those records to be maintained by the City;

b. enjoin the Defendant Austin Mayor and City Council Members (their successors in office) and Austin employees from withholding local government records in the future—

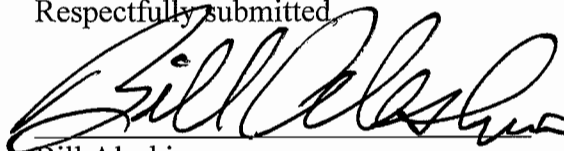
including those created or received by Austin officials or employees on their personal communication systems—from the Austin Records Management Officer;

c. order the Defendant City of Austin to obtain the requested emails and text messages from the Mayor and Council Members and provide those records to The Austin Bulldog;

d. order the Defendant City of Austin to provide to The Austin Bulldog copies of any local government records that were collected on the City's computer server during 2010 (as requested by The Austin Bulldog on January 19<sup>th</sup> or 27<sup>th</sup>, 2011) that the City has not yet provided; and

e. 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 March 7, 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

**Levinski, Robert**

---

**From:** Coleman, Glen  
**Sent:** Wednesday, July 08, 2009 9:22 AM  
**To:** Council Executive Assistants  
**Subject:** FW: Spark FAQ

Hello,

In case you are new - all emails sent to your City of Austin address are discoverable and subject to open records request.

In the heat of a Council meeting you may wish to communicate sensitive constituent information with your Council Member that would not be appropriate for all of us to enjoy in The Statesman the next day. For these situations we use a chatting application called "Spark". Spark is often used when a constituent wishes to relate information to a Council Member that might be considered private or personal and your Council Member can not leave the dais.

To set up Spark on your and your Council Member's computers, please contact John Regalado x 4.1480 . Once installed, be sure to disable the "chat history" function. You may use the link below.

Cheers All -

\*\*\*\*\*  
- glen coleman

Policy Aide, Council Member Randi Shade  
Austin City Council Place Three  
512 974-1374

---

**From:** Taylor, Heath  
**Sent:** Wednesday, July 08, 2009 8:53 AM  
**To:** Coleman, Glen  
**Subject:** Spark FAQ

I have create the FAQ documentation for disabling Spark Chat history.

<http://im.ci.austin.tx.us/faq/index.php?action=artikel&cat=1&id=18&artlang=en>

Let me know if you have any questions.  
-Heath

--  
Heath Taylor, RHCE  
Network Systems Administrator Sr.  
Communications and Technology Management -- City of Austin  
Office: (512)974-7797, Pager: (512)802-6774

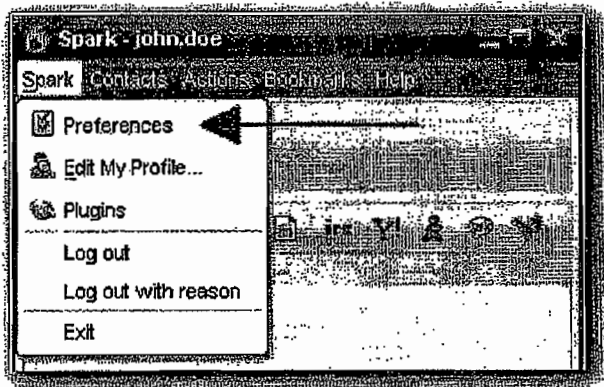


## Spark

ID #1017

### How do I disable Spark chat history from being saved on my computer?

Click on the Spark menu option on the top left of the roster menu. Then Click Preferences.



Make sure are on the Chat icon in the left pane.

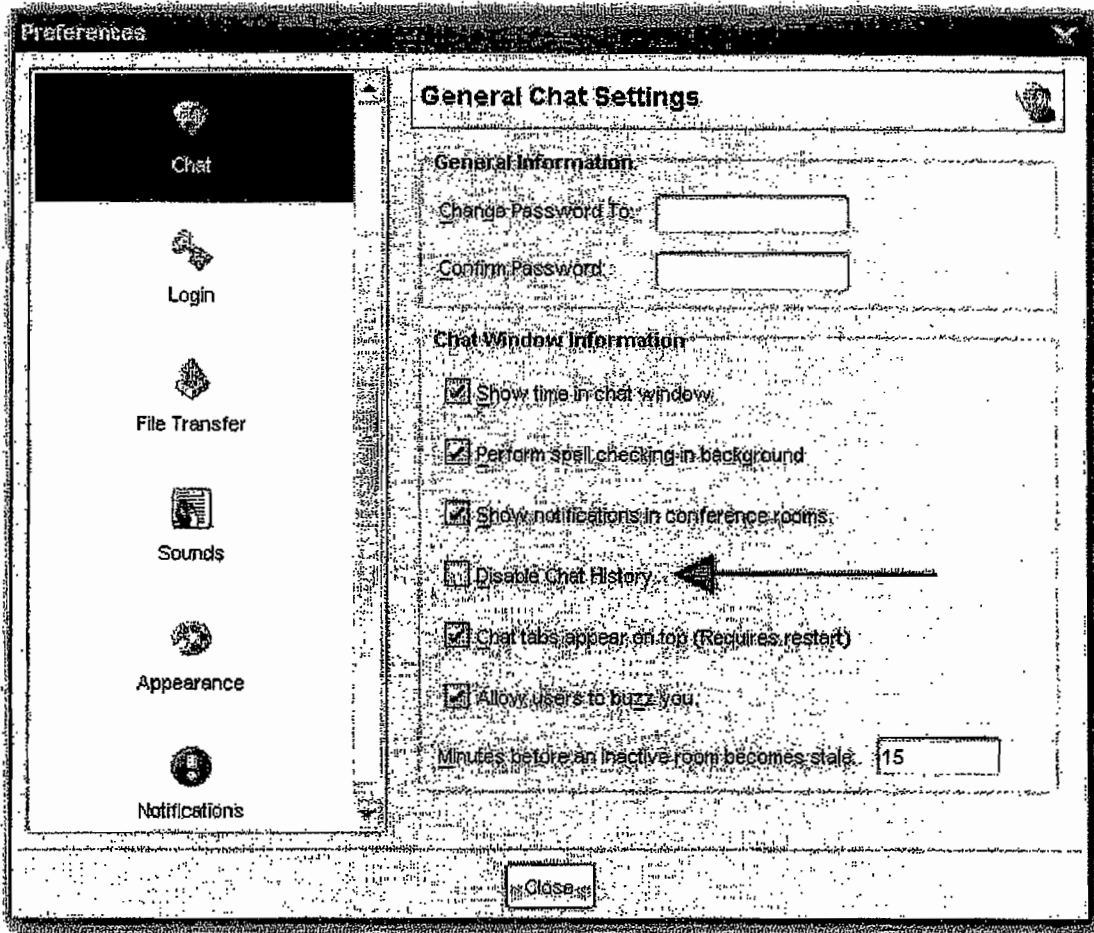
To disable Spark chat history...

Click the check box next to "Disable Chat History".

Another window will pop up asking you "Delete all previous conversations?". Click Yes to delete all your previous chat conversations. Note: Once you do this you will not be able to get the chat logs back.

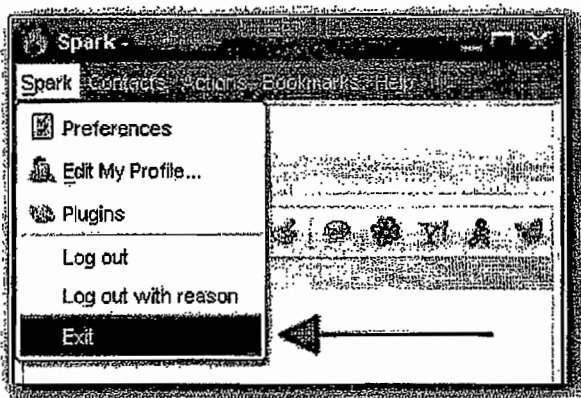
Make sure there is a check mark in the box. Click the close button.





Now you will need to exit Spark and Start the program again.

Click on the Spark menu option on the top left of the roster menu. Then Click Exit.



Start Spark as you normally would after the program exits.

**Levinski, Robert**

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**From:** Levinski, Robert  
**Sent:** Wednesday, July 08, 2009 12:41 PM  
**To:** Coleman, Glen; Council Executive Assistants  
**Subject:** RE: Spark FAQ

Thanks, Glen. I bet everyone will appreciate you bringing that program to their attention.

As an fyi to the other offices, I thought I'd let everyone know a decision our office made several months ago. Our office chose to opt out of using Spark to communicate with Laura on the dais.

On one hand, it is nice to be able to communicate with your boss instantly like if she needs some quick information or even some water. On the other hand, we were uncomfortable using a program that may not comply with the intent of the public information act.

Nowadays, we just use email or talk to her directly.

Thanks,  
Bobby

---

**From:** Coleman, Glen  
**Sent:** Wednesday, July 08, 2009 9:22 AM  
**To:** Council Executive Assistants  
**Subject:** FW: Spark FAQ

Hello,

In case you are new - all emails sent to your City of Austin address are discoverable and subject to open records request.

In the heat of a Council meeting you may wish to communicate sensitive constituent information with your Council Member that would not be appropriate for all of us to enjoy in The Statesman the next day. For these situations we use a chatting application called "Spark". Spark is often used when a constituent wishes to relate information to a Council Member that might be considered private or personal and your Council Member can not leave the dais.

To set up Spark on your and your Council Member's computers, please contact John Regalado x 4.1480 . Once installed, be sure to disable the "chat history" function. You may use the link below.

Cheers All -

\*\*\*\*\*  
- glen coleman

Policy Aide, Council Member Randi Shade  
Austin City Council Place Three  
512 974-1374

---

**From:** Taylor, Heath  
**Sent:** Wednesday, July 08, 2009 8:53 AM

**From:** [Matustik, David](#)  
**To:** [Carvell, Kyle](#)  
**Subject:** FW: Open Records Request  
**Date:** Wednesday, January 19, 2011 2:42:43 PM  
**Attachments:** [inn\\_120x60\\_small\\_white\\_square6\\_0.png](#)

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FYI...

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**From:** Ken Martin [mailto:[ken@theaustinbulldog.org](mailto:ken@theaustinbulldog.org)]  
**Sent:** Wednesday, January 19, 2011 2:42 PM  
**To:** Leffingwell, Lee; [mike.martinez@ci.austin.tx.us](mailto:mike.martinez@ci.austin.tx.us); Riley, Chris; Shade, Randi; Morrison, Laura; Spelman, William; Cole, Sheryl  
**Cc:** Matthews, Douglas; Matustik, David  
**Subject:** Open Records Request

Dear Mayor and Council Members,

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 provide me with copies of the following records, either electronically via pdf e-mailed to me at [ken@theaustinbulldog.org](mailto:ken@theaustinbulldog.org) or on paper:

1. Records of any meeting that you attended with any council member(s) (or the Mayor), from January 1, 2010 to the date of this request. In this request, "meeting" means any occasion in which conversation about official City business occurred, but does not include any publicly posted City Council meeting or publicly posted committee or commission meeting. The requested records include:
  - a. Any paper or electronic calendar showing the date and time of each such meeting;
  - b. Agendas, minutes, memoranda, notes, recordings, or any other record about what was discussed during each meeting.
2. E-mails, letters, memoranda, notes, or other forms of written communication from you to (or copied to, or blind copied to) any council member(s) or the Mayor or the City Manager from January 1, 2010 to the date of this request. This request includes all such written communication regardless of whether other persons also were sent the communication. 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 or Local Government Code, Title 6, Subtitle C.
3. Certificates of course completions or other records documenting that you have taken training as required by Section 551.005 of the Texas Open Meetings Act.
4. Records reflecting any discussion or decision about whether the City of Austin should join in the federal lawsuit, *Asgeirsson, et al. v. Abbott, et al.*, or *City of Alpine v. Wilson* or any similar lawsuit filed on behalf of the elected officials of some cities to challenge the validity of the Texas Open Meetings Act.

If you need clarification of this request, please e-mail me at [ken@theaustinbulldog.org](mailto:ken@theaustinbulldog.org)

If you believe that any of the above requested information is not subject to disclosure, please e-mail me at [ken@theaustinbulldog.org](mailto:ken@theaustinbulldog.org) or call me at 512-474-1022 so that we may avoid the City of Austin having to request an open records opinion or ruling from



the Attorney General.

I agree to pay the reasonable cost of providing this public information as provided by the TPIA. However, considering that this information is requested by a member of the news media and disclosure of this information is in the public interest because information primarily benefits the general public, I therefore request a waiver of all fees and charges pursuant to Section 552.267 of the Texas Public Information Act.

Please contact me at 512-474-1022 or e-mail me at [ken@theaustinbulldog.org](mailto:ken@theaustinbulldog.org) when this information is being delivered via e-mail or paper copies are ready to be picked up.

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

Phone O: 512-474-1022  
e-mail [ken@theaustinbulldog.org](mailto:ken@theaustinbulldog.org)  
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<http://www.linkedin.com/in/kenmartinaustin>  
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City of Austin

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(512) 974-2268

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February 22, 2011

## VIA ELECTRONIC MAIL

Mr. Bill Aleshire  
Riggs, Aleshire & Ray, P.C.  
700 Lavaca, Suite 920  
Austin, Texas 78701

Re: Public Information Act Request submitted to the City of Austin by Mr. Ken Martin on January 19, 2011

Dear Bill:

This is a follow-up to my letter dated February 15, 2011 wherein I provided you with an update on the City's progress in responding to Mr. Martin's January 19, 2011 request for information.

I am writing to inform you that the City has completed the collection, copying and redacting of personal email information on the remaining information responsive to Mr. Martin's request for information. Mr. Martin can pick this information up from the City's Public Information Office after 4:00 p.m. today. I believe you received the updated cost estimate letter on Friday which reflects that \$687.60 will be due at that time.

As you know, the City has requested a ruling from the Attorney General (ID#414099) relating to any non-city related information on city owned equipment and is seeking a ruling that allows the City to withhold any such information since it is not public information. As I informed the Attorney General and demonstrated with representative samples, this information generally relates to holiday plans and sporting events.

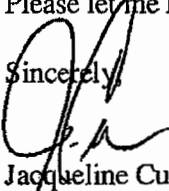


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Please note that the documents provided in response to your request do not include any information that is not assembled, collected or maintained by the City of Austin as public information. The City is not providing any emails or other forms of communication not created on city-owned equipment. The City does not have access to any city official's personal cell phone or personal computer. As such, this information does not fit the definition of public information under the Texas Public Information Act since the City has no right of access. As you are probably aware, there are currently several court cases pending on this issue. See *City of Dallas v. The Dallas Morning News*, 281 S.W.3d 708 (Tex. App. – Dallas 2009); *Tommy Adkisson and Bexar County v. Attorney General of Texas*, D-1-GN-10-002120; *City of Lubbock v. Attorney General of Texas*, D-1-GV-09-001569, 419<sup>th</sup> District Court, Travis County.

Please let me know if you have any questions.

Sincerely,



Jacqueline Cullom  
Assistant City Attorney

cc: Texas Attorney General Greg Abbott