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## MEMORANDUM

**TO:** Mayor Nelson & Members of the City Council, City of Bastrop  
**FROM:** Alan Bojorquez, City Attorney  
**DATE:** October 31, 2024  
**RE:** **Bastrop: Council Data Request Policy**

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## SUMMARY

The Mayor and City Council members have an inherent right of access to City data. Though the City Secretary's office is in practice the custodian of the City's records, the data is the property of the City and ultimate responsibility for the data remains with the City Council (as the City's governing body). A City may not prohibit a Council member from accessing the City's data when the request is made in the Council member's official capacity and for the performance of the Council member's official duties. However, the City Council may establish reasonable rules and procedures for access of data by City Council members.

Attached to this memo is an *updated draft* of a Council Data Request Policy for the City Council to consider if it wishes to establish such rules and procedures. Rules can be helpful in clarifying how data can be accessed, a timeline for providing data, and in what format the data will be conveyed. Rules establishing procedures for processing requests can help balance requirements of *confidentiality* and *security* with the competing need for Council members to perform their official duties.

## ANALYSIS

Under the Texas Public Information Act (the "Act"), a member of the public's request for City records is subject to the procedures prescribed by the Act. In certain circumstances, the City may have the discretion, or may be required by law, to withhold certain information from a requesting citizen. However, because a City Council member is part of the City's governing body, when they are acting within the scope of their official duties as a Council member—and not as a private citizen—then the Council member's request for data is not typically treated as falling under the same procedures and statutory requirements as when a private citizen is requesting City information under the Act.

Members of the City Council, as the City’s governing body, have an inherent right to access the data when:

- 1) the Council member requests the data in the Council member’s official capacity;
- 2) the Council member requests the data for the performance of the Council member's official duties; and
- 3) there is not a statute prohibiting disclosure of data to the Council member.<sup>1</sup>

Although a City may not prohibit a Council member from accessing City data for the performance of official duties, a City is permitted to have reasonable rules and procedures in place to govern how requests for City data from a Council member are processed.<sup>2</sup> For example, in *Hall v. McRaven*, a regent on the Board of Regents for the University of Texas claimed to have the right to access unredacted, confidential student records. Although the Court’s legal ruling in the case was limited to a narrow immunity issue, the opinion suggested that the Court is supportive of an official’s right of access for official duties.<sup>3</sup> But the Court’s decision also acknowledged limitations in certain circumstances, such as where the governing body has established reasonable rules on access or where other laws may apply (such as federal student data confidentiality laws, in that instance).

The Court in *Hall v. McRaven* stated that there may be “concrete limits” on a governing body member’s rights of access when those limits are instituted by policies put in place by the governing body itself.<sup>4</sup> In making its decision, the Court relied in part on a Texas Attorney General opinion which stated, “[r]ules adopted by a university system’s board of regents in the exercise of the board’s delegated authority have the force and effect of law,” noting that courts will generally not interfere with internal rules of a board of regents of a university in the absence of a clear showing of arbitrary action or abuse of discretion.<sup>5</sup> In other words, though a governing body may not prohibit one of its members from asserting a right to access data if the request is within the scope of the member’s duties, the governing body may have reasonable procedural policies in place for accessing that information, as long as the procedure is not an arbitrary action or abuse of discretion.

Adopting a Council Data Request Policy can help balance requirements of confidentiality and security with the competing need for Council members to perform their official duties. A Council member receiving requested information in their official capacity must be cautious in maintaining the documents in the same way they are maintained by the governmental body as a

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<sup>1</sup> See Tex. Att’y Gen. Op. Nos. JM-119 (1983), LO-93-69 (1993), JC-0120 (1999), JC-0283 (2000), GA-0138 (2004), GA-0334 (2005), KP-0021 (2015), and KP-0186 (2018).

<sup>2</sup> See *Hall v. McRaven*, 508 S.W.3d 232 (Tex. 2017).

<sup>3</sup> The legal issue presented on appeal in *Hall v. McRaven* was limited to the question of whether sovereign immunity was waived under an ultra vires theory that Chancellor McRaven went beyond his official authority in refusing to provide unredacted records to a regent. The Court held he had not exceeded his authority under the Board of Regent’s rules; thus, the case required dismissal. *Id.* at 234.

<sup>4</sup> *Id.* at 240.

<sup>5</sup> See Tex. Att’y Gen. Op. No. KP-0021 (2015) (citing *Foley v. Benedict*, 55 S.W.2d 805, 808-809 (Tex. 1932) (orig. proceeding)).

whole, including ensuring confidential information remains confidential. The Act imposes criminal provisions for the release of confidential information.<sup>6</sup>

## CONCLUSION

Council members have an inherent right to access City data in the performance of their official duties. Establishing reasonable rules and procedures can balance the Council members' right of access with caution in how data is maintained, shared, and reviewed internally at the City in order to comply with confidentiality, security, and other interests of the City as the custodian of public records. The proposed *draft* Council Data Request Policy is one approach to do so, if the City Council wishes to provide a procedural framework for coping with these requests.

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<sup>6</sup> Tex. Gov't Code § 552.352. Disclosing confidential information may constitute official misconduct, and may constitute a misdemeanor punishable by either a fine up to \$1,000, confinement in jail for up to six months, or both.