

From: Mark Hatley <mhatley@fatetx.gov>

Date: July 14, 2026 at 11:08:26 AM CDT

To: Andy Messer <>, Marie Johnson

Caroline Cole <Jennifer

Riche <>, Michael Kallas>,

Andrew Greenberg <agreenberg@fatetx.gov>

Cc: Andrew Greenberg <agreenberg@fatetx.gov>

Subject: Re: Request for Clarification Regarding Attorney General Rulings, Ethics Proceedings, and Public Information Act Matters

Please forgive I omitted this question in error. Please add this to the previous request for clarification.

Regarding Public Information Act requests and associated charges, I have another question.

It is my understanding, based on conversations with several other Texas cities, that when the estimated cost of fulfilling an open records request exceeds a certain amount, those cities allow the requestor to pay a deposit so the records collection process can begin while the remaining balance is addressed.

In Mr. (Name redacted) case, the City estimated approximately 225 hours of staff time and more than \$4,000 in costs. Given the size of that estimate, why was Mr. Souder not offered the option of paying a deposit to begin processing his request?

I have spoken with representatives from several municipalities that routinely allow deposits in these circumstances. My concern is that I have received numerous complaints from citizens who believe that high cost estimates and lengthy time estimates may discourage requests for public information, particularly when they involve larger requests or matters of significant public interest. In some cases, citizens have expressed concern that even requests they did not consider especially large resulted in substantial estimated costs.

I understand that a requestor may appeal a cost estimate to the Office of the Attorney General. However, that appeal process can itself create additional delays, which may be significant when the requested information is timesensitive.

Could you please explain why Messer Fort did not offer Mr. (Name redacted) the option of paying a deposit so that work on the request could begin?

Additionally, does the City of Fate have a written policy regarding deposits for Public Information Act requests? If so, please provide a copy of that policy or identify where it is publicly available. If not, please explain how the decision is made whether to offer or require a deposit in response to a request.

Mark Hatley
Fate City Council Member Place 5
City of Fate

On Jul 14, 2026, at 10:55 AM, Mark Hatley <mhatley@fatetx.gov> wrote:

Good morning,
Since the resignation of Messer Fort is a flat effective July 20, 2026.

I'm still requesting answers to the questions below and I'm adding the following. Please respond with corresponding answers to my request before you're effective July 20 official end date to the contract agreement between the city of Fate and Messer Fort.

8. Attorney General Rulings – Michael Vines and Lance Collingsworth

The Attorney General issued separate Public Information Act rulings in response to the requests submitted by Michael Vines and Lance Collingsworth. My understanding is that the ruling issued for Mr. Vines differed materially from the earlier ruling issued for Mr. Collingsworth.

However, the correspondence sent to Mr. Vines by Messer Fort appears to describe the Attorney General's ruling using language that more closely resembles the earlier Lance Collingsworth ruling than the language contained in the ruling issued specifically for Mr. Vines.

Please answer the following:

- a. What provision of the Texas Public Information Act, Attorney General Open Records Decisions, judicial precedent, or other legal authority permits a governmental body's attorney to characterize or restate an Attorney General ruling in a manner that differs from the language contained in the ruling issued for that specific requestor?

- b. Please identify any statute, Attorney General Open Records Decision, or court decision that authorizes a governmental body or its counsel to rely upon the language of a prior Attorney General ruling when responding to a different request if the later ruling contains materially different findings or instructions.
- c. If Messer Fort believed the Attorney General's ruling issued in the Michael Vines request contained an error, ambiguity, or omission, what legal authority permitted the City to provide an explanation that differed from the Attorney General's written ruling rather than seeking clarification from the Attorney General's Office?
- d. Is there any provision of the Texas Public Information Act that authorizes a governmental body to supplement, reinterpret, or modify an Attorney General ruling without first obtaining clarification or another ruling from the Attorney General?
- e. If no such authority exists, would the appropriate course of action have been to seek clarification or another ruling from the Attorney General before providing an explanation to Mr. Vines that differed from the language contained in the Attorney General's ruling issued for his request?
- f. Please identify all legal authorities relied upon by Messer Fort in preparing the City's response to (Name redacted)
-

9. Ross Fischer Investigation and Potential Walking Quorum

In Footnote 1 of Ross Fischer's investigative report, he notes that Council Member Codi Chinn added Council Member Mark Harper to a telephone call that already included Mayor Andrew Greenberg. During that call, Mr. Harper reportedly stated that he had just spoken with Council Member Martha Huffman regarding the possible termination of the Director of DPS.

In addition, other information appears in the City's records, including:

Council Member Scott Kelley seconding the motion to place the DPS Director in executive session.

Records indicating Council Member Scott Kelley agreed with placing the DPS Director in executive session, although not the City Manager. Council Member Codi Chinn stating on a recording that she had multiple conversations with City Manager Michael Kovacs regarding the matter. Recordings in which City Manager Michael Kovacs stated that he was aware several members of the City Council had threatened to terminate him if he did not move the DPS Director into executive session.

Please answer the following:

- a. Did Messer Fort evaluate whether these facts, when considered collectively, presented evidence of a potential walking quorum or a series of communications implicating the Texas Open Meetings Act?
- b. Did Messer Fort analyze whether the City Manager's knowledge of, participation in, or facilitation of communications among multiple council members regarding the same pending personnel matter could constitute assisting or facilitating a walking quorum?
- c. Was there any concern that, if the City Manager met individually with multiple members of the City Council to discuss their views, reasoning, or positions regarding the possible termination of the Director of DPS, those communications could constitute or contribute to a violation of the Texas Open Meetings Act by facilitating a walking quorum?

Specifically, did Messer Fort analyze whether the City Manager's role in receiving, discussing, or relaying council members' views on the pending personnel matter could be viewed as facilitating deliberations among a quorum of the governing body through a series of individual communications? If so, please identify the legal authorities relied upon in reaching that conclusion.

- d. Is it legally possible for a city manager or another non-member of a governing body to participate in coordinating, facilitating, or acting as an intermediary in a walking quorum under the Texas Open Meetings Act? If so, please identify the statutes, Attorney General opinions, court decisions, or other legal authorities addressing that issue.
- e. If Messer Fort concluded that no walking quorum existed, what legal standards and facts supported that conclusion?
- f. If this issue was not analyzed, why was it excluded from the scope of the investigation?

10. Use of the City Attorney for a Personal Matter

On or about February 25, 2025, Planning and Zoning Commissioner (redacted) notified the City Manager and City Attorney Jennifer Richie that she believed Council Member Mark Hatley had blocked her on Facebook. She also publicly stated that she had contacted the City Attorney to obtain a legal opinion regarding that issue.

When I questioned the City Manager how a Planning and Zoning Commissioner could seek legal advice from the City Attorney regarding what appeared to be a personal matter unrelated to City business, he explained that he had authorized the contact as a courtesy because she was a Planning and Zoning Commissioner.

I immediately provided screenshots demonstrating that Ms. (Name redacted) was not blocked.

Please answer the following:

- a. What legal authority authorized the City Manager to permit a Planning and Zoning Commissioner to obtain legal advice from the City Attorney regarding what appears to have been a personal social media dispute?
- b. Was Ms. acting in her official capacity as a Planning and Zoning Commissioner? If so, identify the legal basis.
- c. Did the City Attorney analyze whether this request fell within the scope of legal services authorized to be provided on behalf of the City?
- d. If the matter was personal rather than official City business, why did the City Attorney not advise the City Manager that it fell outside the scope of the City's legal representation?
- e. Did the City Attorney consider whether using City legal resources for a personal matter could constitute an unauthorized use of public resources or otherwise raise concerns under Texas law?
- f. Did the City Manager have legal authority to authorize the use of City Attorney services for this matter? If so, please identify that authority.
- g. Approximately how much City Attorney time was spent on this matter, and who authorized that expenditure?

11. Assertion of Deliberative Process Privilege

In December 2025, the City received no fewer than four Public Information Act requests relating to former DPS Director Lyle Lombard, including requests for electronic communications, recordings, and other responsive records.

Please answer the following:

- a. Why was there no immediate effort to assert any applicable deliberative process privilege before the Attorney General after these requests were received?
 - b. Given the number of substantially similar requests, was there concern that failing to timely assert any applicable privilege could result in waiver of that privilege?
 - c. If the City Attorney believed deliberative process privilege applied, why was it not asserted in the earliest Attorney General submissions?
 - d. Is there a legal deadline under the Texas Public Information Act by which discretionary exceptions or privileges must be asserted? If so, did the City comply?
 - e. Why did the City begin seeking to withhold information only after the City Council voted on February 2, 2026, to waive deliberative process privilege?
 - f. Please explain how the City's timing is consistent with the Texas Public Information Act and applicable Attorney General guidance.
-

12. Compliance with the Attorney General's Rulings

Regarding the Attorney General's rulings issued in response to the Lance Collingsworth and Michael Vines Public Information Act requests:

- a. Where the Attorney General ruled that information "may be withheld," did the City interpret that language as granting discretionary authority rather than requiring withholding? Please identify the legal authority supporting that interpretation.
- b. In the Michael Vines ruling, the Attorney General also determined that certain portions of the recordings "must be released."

Were all portions that the Attorney General determined must be released actually released to Mr. Vines?

If not, identify each portion that was withheld and explain the legal basis for withholding information after the Attorney General expressly directed that it must be released.

c. Please identify any statute, Attorney General opinion, judicial decision, or other legal authority that permits a governmental body to decline to release information after an Attorney General ruling expressly states that the information must be released.

d. If the City believed the Attorney General's ruling requiring release was incorrect, what legal procedures were followed to challenge or seek relief from that ruling before declining to release the information?

Please identify all legal authorities relied upon in answering these questions, including applicable provisions of the Texas Public Information Act, Attorney General Open Records Decisions, Attorney General opinions, and judicial decisions.

Mark Hatley
Fate City Council Member Place 5
City of Fate

On Jul 9, 2026, at 12:06 PM, Mark Hatley <mhatley@fatetx.gov> wrote:

Good morning Mr. Messer, Mr. Kallis, and Ms. Richie,

The following questions are intended to clarify several matters concerning the Attorney General rulings, the ethics proceedings, and the City's handling of related Public Information Act requests and another issue. Because these issues have affected City Council actions, ethics proceedings, cost the city many thousands and public access to government records, I respectfully request a written response to each of the following questions.

1. Officer (Name Redacted) and the February 5, 2026 Attorney General Submission
At the time the Attorney General requests were submitted on February 5, 2026, was it known by the City and/or its legal counsel that (Name Redacted) had been deceased for approximately two months, having passed away on December 8, 2025?

My understanding is that the Andrew Greenberg recording referenced only a redacted discussion concerning Officer (redacted) and a generic mention of a newborn baby, and that Officer (Redacted)'s name was never actually stated in the recording. If the City knew he was deceased before requesting the Attorney General ruling, why was that material fact not disclosed to the Attorney General?

2. Basis for the City's Requested Redactions and Conflicting Attorney General Rulings

Given the existence of two Attorney General rulings that reached materially different conclusions regarding the same recordings, was there any concern that relying solely on the more restrictive ruling, rather than following the later ruling directing that substantially more information 'must be released,' could present issues under the Texas Public Information Act, the Texas Open Meetings Act, or other applicable law?

I have concerns regarding the legal basis for several requested redactions. For example, page 2 of Exhibit 2 concerning the December 2025 No. 1 recording states that the clip involved 'a private matter.' That discussion involved my statement that I had been threatened prior to executive session by Council Member Harper. It was not a formal complaint, no attorney was present, and there was no attorney-client communication. I do not understand the legal basis for requesting that discussion be withheld.

Another recording referenced general advice I had received years earlier from an attorney friend about what someone should generally expect from attorneys. I was not serving on the City Council at that time, the attorney did not represent the City, and he was never my personal attorney. I do not understand how that discussion could qualify as attorney-client privileged information belonging to the City.

These are examples that cause me to question the legal basis for requesting that all of Exhibit 2 be withheld. It appears information may have been characterized as confidential that did not fall within attorney-client privilege or another exception under the Public Information Act.

The City relied upon the ruling in the Timothy Collingsworth request while not following the later Michael Vines ruling, which contained a detailed second-by-second analysis identifying only limited portions that could be withheld while directing that the remainder must be released.

Approximately 22 minutes and 9 seconds of recordings were submitted. The later ruling approved only approximately 3 minutes and 15 seconds for redaction.

Footnote 2 of OR2026-017560 states that the ruling assumes the representative sample is truly representative and does not authorize withholding of records containing substantially different information. Because Officer (redacted) had already passed away before the request was submitted, I question whether the Attorney General had all material facts necessary to evaluate the claimed privacy interest.

These issues became significant because the Attorney General rulings were later relied upon during ethics proceedings against multiple council members and resulted in the City retaining outside investigators at substantial taxpayer expense.

3. Ross Fischer's Resignation

It has been represented that Mr. Ross Fischer resigned prior to the ethics hearing held on May 4, 2026. If accurate, please provide all documentation relating to his resignation, including correspondence, emails, memoranda, or other records explaining the reasons for his resignation.

It has also been stated that Mr. Fischer believed the City Council acted unethically. If that statement is accurate, please explain specifically what conduct he believed was unethical, what facts formed the basis of that belief, and whether those concerns were communicated to the City, its legal counsel, or members of the City Council.

If Ms. Jennifer Richie has knowledge regarding these matters, I would appreciate her explanation of the circumstances surrounding Mr. Fischer's resignation and the basis for any statements concerning his views.

4. Access to Attorney General Rulings During the Ethics Hearing

Did Ms. Jennifer Richie refuse to provide copies of the Attorney General rulings to me before and/or during my ethics hearing? Were those rulings also withheld from my attorney during that process? If so, please explain the legal basis for withholding those rulings during the proceedings.

5. Attorney General Clarification Efforts

During my June 10 meeting with Ms. Richie and Mr. Kallis, after discussing that Officer (Redacted) had passed away before the Attorney General requests were submitted, Mr. Kallis stated he would seek clarification from the Attorney General and indicated that this information would likely make that portion of the recording subject to release. To date, I have not seen any indication that such clarification was requested.

I am also concerned by inconsistencies between what I was told during that meeting and what I was told during my meeting with Mr. Messer this past Monday. During the June 10 meeting, I was told Mr. Messer did not recall learning on June 1 that Officer (redacted) had passed away. During Monday's meeting, Mr. Messer advised that he did remember. I

would appreciate clarification as to which account is accurate.

Following the June 10 meeting, I contacted Assistant Attorney General Joseph Hoggatt, who reviewed the ruling numbers I provided. After reviewing them, he advised me they appeared inconsistent despite substantially identical arguments, exhibits, and recordings, and that the City's attorneys should submit the matter back to the Attorney General for clarification. I documented that conversation by email copying Ms. Richie, Mr. Kallis, and Mr. Hoggatt.

I later received a response indicating clarification required City Council action. Subsequently, the City Council voted to authorize returning the recordings to the Attorney General using the original legal arguments, with the addition that Officer (Redacted) had been deceased since December 8, 2025, or alternatively withdrawing that argument and releasing the recording if appropriate.

Please advise what actions have now been taken and the current status of any clarification request.

6. Public Information Act Cost Estimates Are the previously provided Public Information Act cost estimates of approximately \$4,000 and approximately \$7,000 still considered accurate? If so, please provide a detailed explanation of how those estimates were calculated, including assumptions regarding labor, redaction time, or third-party costs, and confirm whether those figures remain the City's current position.

7. This concerns a potential violation of Texas conflict-of-interest laws by now former Planning & Zoning Commissioner (name redacted) during a

public meeting of the City of Fate Planning & Zoning Commission held on April 17, 2025.

At that meeting, Ms. (redacted) participated in discussion and voted on a zoning/subdivision application involving property located within approximately 200 feet of her residence located at [\(redacted\), Fate, Texas](#), property which she co-owns. During the city recorded public meeting, Ms. Redacted) openly acknowledged that:

- 1 She lived and still lives within 200 feet of the subject property;
- 2 The General Location Is 1001 And [1005 Greenbriar Rd, Fate, Texas](#). The Legal Description For Parcel 10388 Is A0042 J R BRISCOE, TRACT 6, ACRES 4.788. The Legal Description For Parcel ID 10389 Is A0042 J R BRISCOE, TRACT 7, ACRES 5.792, (PT OF 15.792 AC TR). The legal description for parcel ID 10392 is A0042 J R BRISCOE, TRACT 10, ACRES 10, (PT OF 15.792 AC TR). Case # ZR-25-002.
- 3 She admits on the video she had received official notice from the City regarding the application and that she resided within 200 feet of the property that was being voted on.
- 4 She has stated she is highly experienced in Planning & Zoning matters; and ethics with many years experience in Texas and other states as she has claimed.
- 5 She states she has earned a Juris Doctor degree. The meeting recording at approximately 1 hour, 31 minutes, and 30 seconds reflects Ms. (redacted) asserting that she believed no conflict existed because she would not receive a direct financial gain from the application.

Despite acknowledging proximity to the property and participation in the matter, Ms. (Redacted) did not file an affidavit of conflict or abstain from participation and voting.

Applicable Law:

Texas Local Government Code § 171.004 requires a local public official with a substantial interest in a business entity or real property affected by a vote or decision to file an affidavit and abstain from further participation if the action would have a special economic effect on the property distinguishable from its effect on the public.

Additionally, Texas Local Government Code § 211.006(d) states:

“If a member of the zoning commission or board of adjustment has a substantial interest in property affected by a matter before the commission or board, the member shall file an affidavit with the commission or board and may not participate in a vote or decision on the matter.”

My point is this was never reported to the city Council by the city attorney when it was brought up to the city attorney when this particular planning and zoning representative was re-nominated it was blown off just a mistake on her part and the assistant city attorney.

My understanding is these are supposed to be reported to the entire council so they can determine if action or if no action or even just a warning or to be given.

This could've had a detrimental effect upon the city had this passed the council and got the city into a lawsuit.

Mark Hatley
Fate City Council Member Place 5
City of Fate