

October 16, 1990

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
CLOSED SESSION "LEAKS"

At the City Council meeting on September 24, 1990, Councilmember Hartley requested a written ruling from this office on the legality of leaking information concerning the Council's discussions and actions in closed session. By separate memorandum dated September 24, 1990, Councilmember Wolfsheimer asked substantially the same question, but in addition requested that we provide a list of any and all civil and criminal penalties available for redress of closed session "leaks." She also asked whether there is any requirement for elected officials to attend closed session meetings. This report addresses each of those questions.

To respond to these questions, Senior Legal Intern John Kirk prepared an extensive research memorandum. A copy of that memorandum dated October 11, 1990, is attached for your reference.

Essentially, information revealed in closed sessions is protected by both the official information and attorney-client privileges. As Mr. Kirk states:

An individual may not disclose information communicated in a closed session of the City Council as such information is protected by both the attorney-client privilege and the official information privilege. These privileges belong to the Council as a whole, and only the entire Council may authorize waiver of them. Thus, absent a waiver by the Council as a whole, disclosure by an individual Councilmember of information communicated in closed session is unlawful as a breach of these privileges.

Although "leaks" of closed session information are unauthorized and unlawful, absent waiver by the full council, there are currently no criminal or civil sanctions available to redress the wrong. Again, as Mr. Kirk states:

No specific sanctions are promulgated under current statutes and ordinances for unauthorized disclosure of information from a closed session, and defamation actions by individual Councilmembers would likely be unsuccessful. In the absence of the availability of any such sanctions, the City may consider adopting an ordinance imposing civil and/or criminal penalties aimed at alleviating the problem of closed session "leaks."

In answer to Ms. Wolfsheimer's last question we note Charter section 12, which states: "It is the duty of Councilmembers to attend all Council meetings." There is no exception for attendance at closed sessions either in the Charter or in any other body of law. Therefore, Councilmembers have the same duty to attend closed session meetings as they do any other Council meeting.

Respectfully submitted,
JOHN W. WITT
City Attorney

CCM:jrl:011
Attachments
RC-90-53