

AGENDA

Special Called
Commissioners Meeting
September 4, 2008
Noon-City Hall
501 Sheppard Road
Burkburnett, Texas 76354

Item 1. Mayor: Call meeting to order.

Item 2. Invocation.

Item 3. Recess to “Executive Session” pursuant to Section 551.074, Texas Government Code to hear complaints ¹ or charges by W. L. Bunton against the Chief of Police and Lieutenant ² and to evaluate ³ the actions taken by the Chief of Police with respect to the Lieutenant and other police officers and police department employees. ⁴

Item 4. Reconvene to regular session and take action, if any on matters discussed in Executive Session.

Item 5. Ordinance Number 752. An ordinance amending Chapter 50, Garbage and Refuse in the Code of Ordinances.

Item 6. City Manager’s report.

Item 7. Council discussion.

Item 8. Adjournment.

I, Trish Holley, City Secretary for the City of Burkburnett, Texas do hereby certify that I posted this agenda on the glass front door of the City Hall, facing the outside at 4:00 P.M. on Friday, August 29, 2008 in compliance with the Open Meeting Act Chapter 551.

Trish Holley, City Secretary

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodation or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary’s office at (940)569-2263 for further information.

1 Section 551.074 (a)(2) permits an executive session "...to hear a complaint or charge against an officer or employee." Mr. Bunton's request for a hearing of his complaints, if done in executive session, would need to come under this provision. Otherwise Mr. Bunton would not be permitted to attend an executive session on a personnel matter. See *Open Meetings Made Easy*, page 20 at note 96.

2 Here are the considerations in listing the specific officers about whom complaints will be heard:

First, although the Act does not always require the posting of the name of a specific individual, as noted by *Open Meetings Made Easy* (on page 18), that same publication reflects the fact that the more important the position the more specific the posting has to be. See page 18 *Open Meetings Made Easy* at notes 89 and 90. Case law has specifically held that personnel discussions relating to a police chief must be specific. *Mayer v. City of De Leon*, 922 S.W.2d 200 (Tex. App. Eastland 1996) cited at note 90 *Open Meetings Made Easy*. Second, according to the case *Gardner v. Herring*, 21 S.W.3d 767 (Tex. Civ. App.—Amarillo 2000), an executive session cannot be held to discuss a general class of employees. That court held that "...the statute [Section 551.074] has been construed as referring to particular employees or individuals as opposed to employees in general. That is, it permits a governing body to deliberate behind closed doors when it is addressing the appointment, employment, complaint, *etcetera*, of a particular person. Op. Tex. Att'y Gen. No. H-496 (1975) (involving the predecessor to *section 551.074*). Discussion about policy and its application to employees in general or a class of unnamed employees is not authorized. *Id.*" Admittedly, the statements of the Court in this case seem a bit at odds with the statements in the *Open Meetings Made Easy* publication. However, the court opinion certainly carries more weight than a publication of the Attorney General.

Third, when a governmental entity is aware of the matters to be raised by a member of the public, the Attorney General has required that the open meetings notice include that information. Although it related to a "public comment" posting of an open meeting, AG Opinion JC-169 stated, "We caution that the use of 'public comment' or similar term will not provide adequate notice **if the governmental body is, prior to the meeting, aware, or reasonably should have been aware, of specific topics to be raised** [emphasis added]." The prior comments of Mr. Bunton inform the City's knowledge of what he is likely to want to complain about to the Board of Commissioners.

Based on the reasoning in AG Opinion JC-169 if we know or have some reason to be aware of who will be the subject of Mr. Bunton's complaints, we have a duty to use that information in our posting. If the complaints do relate to the upper management of the police department, the authorities discussed above argue for a specific reference to those persons in the notice.

Finally, specific employees can request that an executive session relating to them be conducted in an open session. Section 551.074(b). One solution to this issue would be to notify the named employees before the meeting, explain the purpose of the meeting ---- to hear the complaints in an effort to clear the air ---- and if they don't object to the executive session they will have waived the right to ask for the deliberations to be in open session.

3 Section 551.074(a)(1) permits an executive session "...to deliberate the ... evaluation...of a public officer or employee..."

4 This notice does not specifically mention the internal investigation prepared at the request of the Chief of Police. However, there is no specific requirement in the Open Meetings Act that the items referred to in an executive session be listed so long as the "subject" of the executive session is accurately and fully disclosed in the notice. I find no court case or attorney general opinion directly addressing the question as to whether the internal investigation report would need to be referenced in the notice with respect to this executive session. However, in *City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 1999) the Texas Supreme Court held that a document reviewed in an executive session was not, as a result of its use in an executive session, thereby excepted from disclosure under the Public Information Act. Although addressing the PIA issue the opinion seems to recognize that a governmental body may rely upon documents which are "public information" while in executive session.

