



March 6, 2000

Ms. Kristi DeCluitt
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842-9960

OR2000-0904

Dear Ms. DeCluitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132677.

The City of College Station (the “city”) received a request for several categories of information concerning the city’s Community Development office, including the city’s denial of funds to Brazos Valley Interfaith Outreach (“BVIO”), a non-profit organization that supplies goods and food to families in need. You state that most of the information was made available to the requestor. You contend that the names in Exhibit B are excepted from disclosure pursuant to section 552.101 of the Government Code and that Exhibit C is not “public information” as defined by section 552.002 of the Government Code. We have considered your arguments and reviewed the submitted information.

First, we will address your assertion that no documents exist that would be responsive part of to the request. The requestor asked for “all documentation, letters, memoranda, reports, etc. between Community Development (and/or it’s [sic] staff) and Project Unity (and/or it’s [sic] staff) concerning any records for Project Unity which [were] damaged, missing, or otherwise affected by the recent fire.” You state the city does not have such information, and have informed the requestor of that fact. The Public Information Act (the “Act”) does not require a governmental body to prepare new information in response to open records requests. Open Records Decision Nos. 452 (1986), 342 (1982). Furthermore, the Act does not ordinarily require a governmental body to obtain new information in order to comply with a request. Open Records Decision No. 561 (1990). Because the city does not have the requested information, you need not create any new documents to respond to the open records request.

You assert that the name of recipients of assistance contained in Exhibit B are excepted from public disclosure pursuant to section 552.101 of the Government Code. Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses the common law right to privacy and excepts from disclosure private facts about an individual. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). You contend that release of the names of those who seek assistance from BVIO reveals their personal, financial information, and therefore, the names are protected by common law privacy.

This office has concluded that the background financial information that a person submits to a governmental body is private but basic facts regarding a particular financial transaction between the person and the governmental body are not private. *See* Open Records Decision No. 523 at 4 (1995). This office has determined in several decisions that names of individuals appearing in financial transactions between individuals and governmental bodies constitute basic facts that are not considered confidential information. *See* Open Records Decision Nos. 480 (1987) (names of students receiving loans and amounts received from Texas Guaranteed Student Loan Corporation are public), 385 (1983) (determining that a public hospital’s accounts receivable showing patients’ names and the amounts they owed were open to the public), 374 (1983) (stating that the names of doctors who receive medicaid payments and the amounts paid were subject to disclosure), 318 (1982) (concluding that names and addresses of individuals who occupy public housing are not protected by common law privacy). Therefore, the requested information in Exhibit B must be released to the requestor.

Next, we consider your claim that Exhibit C falls outside the purview of section 552.002 of the Government Code. Section 552.021 of the Government code provides for public access to “public information.” Section 552.002 defines “public information” as

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov’t Code § 552.002. This office has additionally observed that certain factors are relevant, although not exhaustive, in deciding whether a document is essentially a governmental or

personal document: who prepared the document; the nature of its contents; its purpose or use; who possessed it; who had access to it; whether the governmental body required its preparation; and whether its existence was necessary to or in furtherance of official business. Open Records Decision No. 635 at 4-5 (1995). *See also* Open Records Decision Nos. 626 (1994) (handwritten notes taken during oral interview by Texas Department of Public Safety promotion board members public are public information), 450 (1986) (notes of appraisers taken in the course of teacher appraisals were public information), 120 (1976) (faculty members' written evaluations of doctoral student's qualifying exam are subject to act). *But see* Open Records Decision Nos. 635 (1995) (calendar purchased and maintained by a commission employee who had sole access to it was not subject to the act), 77 (1975) (personal notes made by individual faculty members for their own use as memory aids were not subject to the act).

You explain that the notes were created by the Director of the city's Community Development office during two separate telephone conversations with a former and a present board member of BVIO, the nonprofit organization, whose management and use of community block grant funds the city was questioning at that time. You assert that these notes were taken as a memory aid, and that the Director prepared, possessed, controlled, and had sole access to these notes. Additionally, you state that these notes were the personal opinions of the people with whom the Director spoke, that the notes were not used in conducting city business, and that public funds were not used in creating or maintaining the notes.

You state that the Director used the notes as a memory aid; however, you also assert that the notes were not used in conducting city business. This office determined that information is generally public information within the Act when it relates to the official business of a government body. Open Records Decision No. 635 at 4 (1995). It appears from your assertions that the Director produced the notes at issue during the conversations the Director had with a former and present BVIO board member, which were conversations concerning the city's current business regarding BVIO's management of its programs and use of the city funding. The notes' contents reflect the concerns the Director had regarding certain BVIO members' actions that are related to the city's ongoing investigation. Although the Director had sole possession of these notes, this office has concluded that simply because an individual member of the governmental body rather than some governmental body as a whole possesses the documents does not cause that information to fall outside the Act. *Id.* at 3. Furthermore, you contend that public funds were not used in creating or maintaining the notes. However, in Open Records Decision No 635, this office concluded that although information is contained in privately owned media, if that information is used "in connection with the transaction of official business" such recordings, are subject to the Act. *Id.* at 7. In this instance, we conclude that the notes deal with the Director's official business as the notes relate to the BVIO's current board members and the city has concerns about BVIO's management of its programs and use of the city's funds. Therefore, based on your

representations and our review of the records, we believe that the information in Exhibit C consists of “information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business.” *See* Gov’t Code § 552.002. Consequently, we conclude that the notes in Exhibit C are subject to the Act. Because the notes are subject to the Act and the city has not asserted any exceptions to their public disclosure, the notes must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

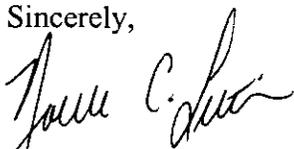
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Noelle C. Letteri". The signature is fluid and cursive, with the first name being the most prominent.

Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/ch

Ref: ID# 132677

Encl. Submitted documents

cc: Mr. Benito Flores-Meath
901 Val Verde Drive
College Station, Texas 77845-5125
(w/o enclosures)