OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

July 27, 2000

Ms. Carolyn Jones
Town Secretary
Town of Fairview
500 South Highway 5
Fairview, Texas 75069

OR2000-2844

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137628.

The Town of Fairview (the "town") received a written request for thirteen categories of information pertaining to the town's budget, town council actions, an internet web site concerning the McKinney Municipal Airport, and the rental of signs and billboards. You state that the town will make available to the requestor records responsive to items 1 - 5.[1] You contend that the remaining requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code.

We begin by outlining the specific information at issue that the town seeks to withhold. The items are as follows:

6. A copy of any check, purchase order, draft, or voucher representing payment by the town or to any employee or public official reimbursed by the town for rental of any sign or billboard.

7. A copy of any check, purchase order, draft, or voucher representing payment by the town for expenses incurred in creating or maintaining any internet website.

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[1]You state, however, that the town "does not waive any privileges or exceptions which may be applied once the Attorney General decides on applicable exceptions." Records that a governmental body voluntarily releases to one member of the public are generally deemed to be available to any other member of the public. *See* Gov't Code § 552.007

8. A copy of any check, purchase order, draft, or voucher representing payment by the town for expenses incurred in any mailing either within or without the town limits.

9. Contracts for a) web page server services, and b) web page design.

10. Copies of documentation of contributions of town services or funds to create the website.

11. Copies of all drafts of the web page in process, including edits, and revisions.

12. Copies of all written or electronic materials used to develop the website.

13. Copies of all documents received by the town as a part of any bid received in connection with the purchase or rental by the town of a billboard regarding the McKinney Municipal Airport.

We note at the outset that much of the information you seek to withhold is specifically made public information under section 552.022 of the Government Code. Section 552.022(a) provides in pertinent part:

> Without limiting the amount or kind of information that is public information under this chapter, *the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law*:
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> . . . .
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> (3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body.
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> . . . .
>
> (16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege.

Gov't Code § 552.022(a)(3), (16) (emphasis added). After reviewing the information at issue, we conclude that the town must release pursuant to section 552.002(a) all records

responsive to items 6, 7,[2] 8, 9, 10 and 13. None of these records may be withheld under the exceptions you have raised.

We now address whether the documents responsive to items 11 and 12 are excepted from public disclosure under section 552.103. The test for establishing that section 552.103(a), the "litigation exception," applies to requested information is a two-prong showing that (1) the governmental body is a party to pending or reasonably anticipated litigation, and (2) the information at issue is related to that litigation. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997), *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Additionally, the governmental body must demonstrate that the litigation was pending or reasonably anticipated at the time the request for the information was received. Gov't Code § 552.103(c). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You have not demonstrated that litigation in which the town would be a party is reasonably anticipated in this instance. In fact, you inform this office that the town "currently has no plans to initiate litigation" relating to any of the records at issue. Nor have you provided evidence to this office that the town anticipates becoming a defendant in any related legal action. We conclude, therefore, that the town may not withhold any of the information at issue pursuant to section 552.103.[3]

Finally, you contend that information revealing the identities of individuals who made contributions for the billboards and web site is protected from public disclosure pursuant to section 552.101 of the Government Code in conjunction with the common law right of privacy. In Open Records Decision No. 590 (1991), this office addressed whether information revealing the identities of donors and the amount of the donations to West Texas State University was confidential under section 552.101. This office determined that

> Under Texas common law, a disclosure of information constitutes an invasion of privacy if it meets two conditions: (1) the information contains

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[2]Although you indicate that portions of the attorney billing statements responsive to item 7 come within the attorney-client privilege, you have redacted those portions of the bills that you submitted to this office. Consequently, it is impossible for this office to determine the extent to which the attorney fee bills are protected by the attorney-client privilege. We therefore have no basis on which to conclude that the information you have redacted is excepted from public disclosure under section 552.022(a)(16).

[3]You have brought to our attention this office's decision in Open Records Letter No. 98-2589 (1998) that the City of McKinney could withhold pursuant to section 552.103 certain information requested by the town based on the city's demonstration that the town had taken concrete steps towards litigation against the city. That decision by this office was based on information before us at that time, and does not affect the town's burden to otherwise demonstrate the applicability of section 552.103 in this instance.

> highly intimate or embarrassing facts about a person's private affairs, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex.1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 545 (1990). A pledge or donation of property to the university is a financial transaction between the donor or pledgor and a public body. As such, it does not involve facts about an individual's *private* affairs. It is, moreover, a matter of legitimate public concern, as the public has an interest in knowing who funds and therefore potentially influences public entities. This concern extends to the amount of the donation as well as the identity of the donor. . . . Thus, we do not find that common-law privacy bars the disclosure of the requested material.

ORD 590 at 3 (1991). The rationale in Open Records Decision No. 590 resolves this aspect of your request. Because the requested donor information is not protected by common law privacy, the town must release this information.

To summarize, the town must release all of the requested information. None of the information at issue comes under the protection of any of the exceptions you have raised.

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).

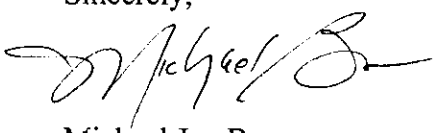
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/RWP/ljp

Ref: ID# 137628

Encl. Submitted documents

cc: Mr. Greg S. Boling
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(w/o enclosures)