



January 16, 2001

Ms. Heather Silver  
Assistant City Attorney  
Office of the City Attorney  
City Hall  
1500 Marilla  
Dallas, Texas 75201

OR2001-0154

Dear Ms. Silver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143216.

The City of Dallas (the "city") received a written request for, among other things, "documents and related information concerning Greyhound's Petition of Abandonment number 24021." You state that some responsive information will be made available to the requestor. You contend, however, that other requested information is excepted from disclosure under section 552.105 and 552.111 of the Government Code.

You first seek to withhold Exhibit B, an appraisal report prepared for the city, pursuant to section 552.105(2) of the Government Code. Initially, we note that the Seventy-sixth Legislature amended section 552.022 of the Government Code to make certain information expressly public, and therefore not subject to discretionary exceptions to disclosure. Gov't Code § 552.022. Section 552.022(a) now states in relevant 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 are not excepted from required disclosure under this chapter unless they are expressly confidential under other law.

One such category of expressly public information under section 552.022(a) is "a completed report, audit evaluation, or investigation made of, for, or by a governmental body, except as

provided by [s]ection 552.108 . . .” Gov’t Code § 552.022(a)(1). The submitted appraisal report is a “completed report” made for the city. Therefore, as prescribed by section 552.022(a), the submitted appraisal report must be released to the requestor unless it is confidential under other law.

You argue that the appraisal report is excepted from disclosure under section 552.105. Section 552.105 is a discretionary exception and not “other law” for purposes of section 552.022(a).<sup>1</sup> Moreover, we know of no other law that would make the submitted appraisal report confidential. Accordingly, the city must release the submitted appraisal report in accordance with section 552.022(a)(1).

You next contend that the three memoranda you submitted to this office as Exhibit C are excepted from public disclosure pursuant to section 552.111 of the Government Code, which excepts from required public disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” Gov’t Code § 522.111. In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. After reviewing the memoranda at issue, we agree that the city may withhold the three memoranda in their entirety pursuant to section 552.111 of the Government Code.

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.

---

<sup>1</sup>Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding), 549 at 6 (1990) (governmental body may waive informer’s privilege), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions therefore do not constitute “other law” that makes information confidential.

*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).

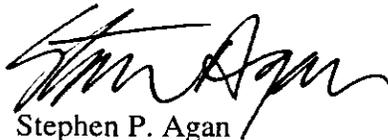
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Stephen P. Agan  
Assistant Attorney General  
Open Records Division

SPA/RWP/seg

Ref: ID# 143216

Encl. Submitted documents

cc: Ms. Karen Goodchild  
1330 Dragon Street  
Dallas, Texas 75229  
(w/o enclosures)