



February 9, 2001

Ms. Victoria J.L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
1917 IH 35 South
Austin, Texas 78741

OR2001-0495

Dear Ms. Hsu:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 144089.

The Texas Board of Professional Engineers (the "board") received a request for information that the board had requested and received from the City of Houston (the "city") concerning file D-1225. You state that you have released the Request for Council Action forms to the requestor. You ask whether you may withhold the remaining requested information, two affidavits, under section 552.108(a)(2) in accordance with Open Records Letter No. 2000-4108 (2000). We have considered your arguments and reviewed the submitted information.

You inform this office and provided documents showing that the city's release of information to the board was not a release under the act, but rather was an intergovernmental transfer of the information. This office has concluded that information may be transferred between governmental bodies that are subject to the act without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* Open Records Decision No. 516 (1989). Thus, the release of information by one agency to another agency is not a release to the public for the purposes of section 552.007 of the Government Code, which prohibits the selective disclosure of information, or for those of section 552.352, which provides criminal penalties for the release of information that is considered to be confidential. *Id.*

In responding to the board's request for information, the city informed the board that "in cooperation with your investigation of the matter authorized within your jurisdiction, the [city] is making available to you the requested records through an inter-governmental

transfer of documents, which is not a release to the public under the [act], so not to waive the exception from disclosure under the [a]ct.” The board does not wish to waive the city’s exceptions to disclosure of the transferred information. Therefore, the board asks whether it may withhold the affidavits pursuant to Open Records Letter No. 2000-4108. Pursuant to the interagency transfer doctrine, the city has not waived its section 552.108 claim by transferring the information to the board.

The affidavits at issue here were also at issue in Open Records Letter No. 2000-4108. In the earlier decision, this office concluded that the city may withhold the information under section 552.108(a)(2) because the charges were dismissed, and therefore, the requested information relates to an investigation that concluded in a result other than conviction or deferred adjudication. Hence, on behalf of the city, the board may rely on Open Records Letter No. 2000-4108 to withhold the affidavits.

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).

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/er

Ref: ID# 144089

Encl. Submitted documents

cc: Ms. Hilda G. Scott, P.E.
13120 Walnut Lake Road
Houston, Texas 77065
(w/o enclosures)