



May 24, 2001

Mr. Michael J. Consentino  
City Attorney  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

OR2001-2154

Dear Mr. Consentino:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147635.

The City of Bryan (the "city") received a request for various information related to the Traditions Project. You state that you have released portions of the requested information to the requestor. You assert that the remainder of the information responsive to this request is excepted from required public disclosure under sections 552.101, 552.103, and 552.107 of the Government Code, and the Texas Rules of Evidence and Texas Rules of Procedure. We have considered your claims and reviewed the representative sample of information submitted as exhibits "B" through "J."<sup>1</sup>

We first note that the city's request for ruling in this instance is related to a public information request from another requestor, Beth Price. The city's request for ruling in that matter is being addressed in a separate ruling, which was assigned ID# 147621. This ruling will only address the public information request dated March 8, 2001, from Cathy Locke of the Brazos County District Attorney's Office.

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<sup>1</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We note that the requestor in this instance is the Assistant District Attorney for Brazos County. Although a governmental body may treat a request for information as a request under the Public Information Act (the "Act"), the Act does not require that it do so when the requestor is an employee of that or another governmental body. *See* Attorney General Opinion JM-119 at 2 (1983). The transfer of information within a governmental body or between governmental bodies is not necessarily a release to the public for purposes of the Act. *See id.* For example, a member of a governmental body, acting in her official capacity, is not a member of the public for purposes of access to information in the governmental body's possession. Thus, an authorized official or employee may review records of the governmental body without implicating the Act's prohibition against selective disclosure. *See* Attorney General Opinion JM-119 at 2 (1983); *see also* Open Records Decision Nos. 468 at 4 (1987). However, in this case, the city has chosen to treat this request for information as a request under the Act.

We turn now to your arguments under section 552.101. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying *only under a court order issued under Subsection (b)(3).*" (Emphasis added.) We have not been informed that a court ordered the certified agendas be available to the public. Therefore, because the information is considered to be confidential by law, it cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). The city must withhold the requested certified agendas from public disclosure under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

Finally, we turn to your arguments under section 552.107. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). Section 552.107(1) does not except purely factual information from disclosure. *Id.* We conclude that exhibits "B" through "I" are protected by the attorney-client privilege, and therefore, you may withhold exhibits "B" through "I" under section 552.107.

In summary, the city may withhold exhibits "B" through "I" under section 552.107. In addition, the city may withhold the requested certified public agendas under section 552.101 in conjunction with section 551.104(c) of the Government Code.

Because sections 552.101(in conjunction with section 551.104 of the Government Code) and 552.107 are dispositive, we do not address your arguments under section 552.103 and additional arguments under section 552.101. 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, except to the extent otherwise specifically noted herein.

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,

A handwritten signature in cursive script that reads "Karen A. Eckerle".

Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/dkb/seg

Ref: ID# 147635

Encl. Submitted documents

cc: Ms. Cathy Locke  
Assistant District Attorney  
Brazos County  
300 East 26<sup>th</sup> Street  
Bryan, Texas 77805  
(w/o enclosures)