



October 8, 2001

Mr. Kevin D. Pagan  
Assistant City Attorney  
City of McAllen  
P.O. Box 220  
McAllen, Texas 78505-0220

OR2001-4518

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152909.

The City of McAllen (the "city") received a request for information relating to appraisals of real property in the vicinity of the requestor's property. You claim that the requested information is excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you raise and have reviewed the representative sample of responsive information you submitted.<sup>1</sup>

We note that the submitted information comes within the scope of section 552.022 of the Government Code. Section 552.022 provides that

*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:*

...

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by section 552.108[.]

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<sup>1</sup>This letter ruling assumes that the submitted "exemplar set of information" is truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the city to withhold any responsive information that is substantially different from the submitted information. See Gov't Code § 552.301(e)(1)(D): Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Gov't Code § 552.022(a)(1) (emphasis added). In this instance, the submitted information comprises a completed report. Thus, section 552.022(a)(1) requires the release of this information, unless it is excepted from disclosure under section 552.108 or expressly confidential under other law. Section 552.105 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000), 357 at 3 (1982). As such, section 552.105 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the city must release the requested information in accordance with section 552.022(a)(1).

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).

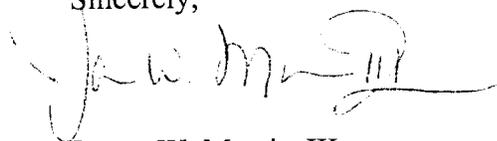
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dept. 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, appearing to read "James W. Morris, III". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 152909

Enc: Submitted documents

c: Mr. Tom Wilkins  
P.O. Box 3609  
McAllen, Texas 78502  
(w/o enclosures)