



October 9, 2001

Ms. Julie Gannaway
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2001-4547

Dear Ms. Gannaway:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153009.

The City of Bryan (the "city") received a request for "e-mails sent and received from all city council members and both mayors from January 1, 2001 to the present." You inform us that the city plans to release some of the requested information. You claim that a portion of the requested information is excepted from disclosure under sections 552.101, 552.107 and 552.127 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.²

Citing the recent case *In re City of Georgetown*, you argue that section 552.101 will except the information at issue in Exhibit B from public disclosure as information "confidential under other law." However, in that case, the Texas Supreme Court held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning

¹You assert that the Texas Supreme Court in *City of Georgetown* held that "governmental bodies do not have to seek an Attorney General opinion when the information requested is 'confidential under other law'." We do not agree with your reading of that case. The Public Information Act clearly requires that "[a] governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception. . . ." Gov't Code §552.301(a).

²We 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.

of section 552.022.” *In re City of Georgetown*, No. 00-0453, 2001 WL 123933, at 8 (Tex. Feb. 15, 2001). In this case, the information at issue is not the type of information that comes under the purview of section 552.022. Therefore, *Georgetown* is not applicable in this case, and we do not address your section 552.101 claim.

You next claim that section 552.107 excepts the information in Exhibit B from public disclosure. Section 552.107(1) of the Government Code excepts information “that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct[.]” While section 552.107(1) appears to apply to information within rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, this office has determined that section 552.107 cannot be applied as broadly as written to information in the possession of an attorney for a governmental body. Open Records Decision No. 574 (1990). Section 552.107(1) was found to protect only the attorney’s communication of legal advice or opinion to the client and communications from a client to an attorney where those communications are made in confidence and in furtherance of the attorney rendering professional legal service to the governmental body. *Id.* at 5. Moreover, section 552.107(1) does not except purely factual information from disclosure. *Id.* We determine the applicability of section 552.107(1) on a case-by-case basis. You state that the information contained in Exhibit B consists of e-mail correspondence “between the City Secretary Mary Lynne Stratta, City Councilmembers, Acting City Manager Hugh Walker, City Attorney Michael Cosentino, and outside counsel Alan Bojorquesz.” Upon review of your arguments and the submitted representative samples of information in Exhibit B, we find that the information at issue reflects an attorney’s legal advice or opinions and client confidences. We have marked the types of documents that the city may withhold from public disclosure under section 552.107.

You next argue that section 552.127 of the Government Code excepts the information submitted as Exhibit C from public disclosure. Section 552.127 excepts from disclosure information which “identifies a person as a participant in a neighborhood crime watch organization and relates to the name, home address, business address, home telephone number, or business telephone number of the person.” We have marked the information in Exhibit C that must be withheld from disclosure under section 552.127.

The submitted information in Exhibit C also contains an e-mail address obtained from the public. The Seventy-seventh Legislature recently added section 552.137 to chapter 552 of the Government Code. This new exception makes certain e-mail addresses confidential.³

³House Bill 2589, which also makes certain e-mail addresses confidential, took effect on September 1, 2001. See Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (to be codified at Gov’t Code § 552.136). The language of section 552.136, as added by House Bill 2589, is identical to that of section 552.137.

Senate Bill 694, as passed May 14, 2001, signed by the Governor May 26, 2001, and made effective immediately, provides in relevant part:

Sec. 552.137. CONFIDENTIALITY OF CERTAIN E-MAIL ADDRESSES.

(a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Act of May 14, 2001, 77th Leg., R.S., S.B. 694, § 1 (to be codified at Gov't Code § 552.137). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. The city must, therefore, withhold the e-mail address under section 552.137.

In summary, the city may withhold the marked information in Exhibit B under section 552.107. The e-mail address in Exhibit C is confidential under section 552.137, while the marked information relating to a participant in a neighborhood crime watch organization must be withheld from public disclosure under section 552.127. The remaining responsive information must be released to the requestor.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 153009

Enc. Submitted documents

c: Mr. John LeBas
The Bryan-College Station Eagle
P.O. Box 3000
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(w/o enclosures)