



March 27, 2002

Ms. Kathryn V. Garner
Andrews & Kurth, Mayor, Day, Caldwell & Keeton, LLP
600 Travis, Suite 4200
Houston, Texas 77002

OR2002-1520

Dear Ms. Garner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160361.

The Texas State Affordable Housing Corporation ("TSAHC"), which you represent, received a request for all documents and other information concerning the Willowick, the Wharf, and the Rafters apartment complexes and a proposed bond issue pertaining to those complexes. The requestor specifically seeks the appraised value of the complexes, the proposed sale price of the complexes, and the sources and uses fund statement for the bond issue.¹ You state that TSAHC has no objection to release of the requested information, but, pursuant to section 552.305, you notified representatives of WDOP Sub I LP, a wholly owned subsidiary of Oly Hightop Parent, L.P. ("WDOP"), and South Texas Affordable Properties Corporation, ("STAPC"), of the request for their information and invited these entities to submit arguments to this office as to why the information at issue should not be released.² Both WDOP and STAPC made arguments to this office and contend that the requested information is confidential as a trade secret and/or commercial or financial

¹You note that the requestor also generally asks for other information relating to the properties and the bond issue, and that TSAHC has sought clarification from the requestor as to whether he seeks information other than that specifically enumerated above. *See* Gov't Code § 552.222(b) (authorizing governmental body's request for clarification of records request). As you have not provided us with any clarification concerning the scope of the information requested, our ruling is limited to the information you have submitted to this office as responsive.

²*See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances).

information under section 552.110 of the Government Code. We have considered the arguments raised by all the parties and have reviewed the submitted information.

We note at the outset that the request for information submitted to TSAHC is not from a member of the public but from another governmental entity. We ruled in Open Records Decision No. 661 (1999) that whether a governmental entity may release information to another governmental entity is not a question under the Public Information Act (the "Act") as the Act is concerned with the required release of information to the *public*. Gov't Code §§ 552.001, .002, .021; *see* Attorney General Opinions, H-683 (1975), H-242 (1974), M-713 (1970); Open Records Decision No. 655 (1997). For many years, this office has recognized that it is the public policy of this state that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of statutory duties. *See, e. g.*, Attorney General Opinion H-836 (1976); Open Records Decision No. 655 (1997). *But see* Attorney General Opinions DM-353 at 4 n. 6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated entities), JM-590 (1986) (same); Open Records Decision No. 655 (1997) (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). In adherence to this policy, this office has acknowledged that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 655 (1997), 414 (1984). Moreover, 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. Open Records Decision No. 516 (1989). Accordingly, TSAHC has the discretion to release the requested information to the City of Corpus Christi. However, should you decline to exercise that discretion, you must nonetheless adhere to the following decision regarding the applicability of the claimed exception to the requested information.

Next, we note that the information you have submitted in Exhibit C, consisting of three separate appraisal reports for the three apartment complexes in question, is subject to section 552.022 of the Government Code. Section 552.022 states in relevant part:

- (a) 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.

Gov't Code § 552.022. One such category of expressly public information under section 552.022 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

To summarize, the information we have marked in Exhibits C and D is excepted from disclosure under section 552.110(b), and must therefore be withheld from the requestor. The remainder of the submitted information, including all of the information in Exhibit E, 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 160361

Enc. Submitted documents

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