



May 28, 2002

Ms. Lisa Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2002-2830

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163511.

The City of Corpus Christi (the “city”) received a request for information related to the zoning of a particular area. The requestor also asked a series of questions. The Public Information Act (the “Act”) does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. However, the Act does require the governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Thus, the fact that a request for information is stated in the form of a question does not necessarily relieve the governmental body of its responsibility to make a good faith effort to identify information that is responsive to the request. *See also* Open Records Decision No. 483 at 2 (1987) (stating that the Act requires no particular request form or “magic words”). You claim that a portion of the requested information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. As you do not raise any exception to disclosure of the remaining requested information, we presume that you have released it. *See* Gov’t Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). We have considered the exceptions you claim and reviewed the submitted information.

Subsections 552.301(a) and (b) provide:

(a) 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 [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You inform us that the department received the request for information on March 6, 2002. You did not request a decision from this office until March 21, 2002. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code. Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). You contend that section 552.107 of the Government Code makes this information confidential.¹ However, section 552.107 is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See* Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)); 522 at 4 (1989) (discretionary exceptions in general). Thus, we conclude that the submitted information must be released to the requestor. We caution that the distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352.

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

¹As you did not submit to this office written comments stating the reasons why section 552.111 would allow the information to be withheld, we find that you have waived this exception. *See* Gov't Code §§ 552.301, .302.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 163511

Enc. Submitted documents

c: Mr. Thomas J. Henry
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(w/o enclosures)