



November 19, 2002

Mr. Michael F. Miller
Assistant City Attorney
City of Galveston
P.O. Box 779
Galveston, Texas 77553-00779

OR2002-6595

Dear Mr. Miller:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172426.

The City of Galveston (the "city") received a request for seven categories of information pertaining to mobile concessions in the vicinity of the Wal Mart store located on Seawall Boulevard in Galveston. You state that the city will provide most of the responsive information to the requestor but claim that certain information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also considered the comments submitted to this office by the requestor. See Gov't Code § 552.304 (providing for submission of public comments).

We first address the requestor's claim that the city failed to submit its request for a ruling to this office within the statutorily allotted time period. Subsections 552.301(a) and (b) of the Government Code provide:

¹We 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.

(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 state that the city received the request for information on August 29, 2002. The requestor has submitted a return mail receipt which indicates that the city received the request for information on August 30, 2002. Calculating the ten business-day deadline from the earlier of these two dates, the city was required to submit its request for a decision to this office by September 12, 2002. The city requested a decision from this office on September 11, 2002. Consequently, the city requested a decision within the ten business-day period mandated by section 552.301(a) of the Government Code. Therefore, we will address the city's argument against disclosure of the submitted information.

You initially argue that the requested information does not come under the definition of public information, although you make no arguments in support of this assertion. We note that section 552.021 of the Government Code provides for public access to "public information." Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Upon review of the information at issue, we conclude that it is maintained by the city in connection with the transaction of official city business, and therefore, it is subject to disclosure under the Act. Given this conclusion, we will address your arguments against disclosure of the requested information.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his or her 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). Upon review of the submitted information, we agree that this information is protected by the attorney-client privilege in its entirety, and therefore, it may be withheld from the requestor under section 552.107(1). As we are able to make this determination, we need not address your other arguments against disclosure.

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,

A handwritten signature in cursive script that reads "Michael A. Pearle".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 172426

Enc. Submitted documents

c: Mr. Mark W. Stevens
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(w/o enclosures)