



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 7, 2003

Mr. Lance Vanzant
Pilot Point City Attorney
Hayes, Coffey & Berry, P.C.
P.O. Box 50149
Denton, Texas 76206

OR2003-0842

Dear Mr. Vanzant:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176109.

The City of Pilot Point (the "city"), which you represent, received a request for the approved minutes of the City Council's regular meeting held on October 28, 2002, and for the documents provided to council members, the agenda, and the audio tape of the City Council's Regular Meeting held on November 11, 2002. The requestor also asks for a copy of his request letter "showing the date, time and by whom it was received."¹ You claim that the requested audio tape is excepted from disclosure under section 552.108 of the Government Code. We assume you have released the remaining requested information, to the extent it existed at the time the city received the present request, to the requestor. If not, you must do so at this time. *See* Gov't Code §§ 552.301, .302. We have considered the exception you claim.

At the outset, we must address the city's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or

¹We note that the Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not submit a copy of the specific information you seek to withhold or representative samples of such information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You have not provided a compelling reason under section 552.108 of the Government Code to overcome the presumption of openness. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive section 552.108); *but see* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108).

Further, you inform us that the events of the November 11, 2002 meeting were recorded pursuant to section 551.021 of the Government Code. We note that the minutes, tape recordings, and agendas of a governmental body's public meetings are specifically made public by statute. *See* Gov't Code §§ 551.022 (minutes and tape recordings), 551.043 (notice). Information specifically made public by statute may not be withheld from the public under any of the Public Information Act's (the "Act") exceptions to public disclosure. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Therefore, the requested audio tape of the City Council's regular meeting held on November 11, 2002 may not be withheld from the public pursuant to any provision of the Act. Accordingly, the city must release the requested audio tape to the requestor.²

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

²We note that section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Thus, a tape recording of a closed meeting cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988).

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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 176109

c: Mr. Michael J. Davis
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Pilot Point, Texas 76258