



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

March 10, 2003

Ms. Mia Settle-Vinson  
Assistant City Attorney  
City of Houston - Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2003-1566

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177624.

The City of Houston (the "city") received a request for information regarding Spring Branch Super Neighborhood West. In particular, the requestor asks for minutes of monthly meetings, and communications to and from Spring Branch Super Neighborhood West that make reference to the requestor, two other individuals, or two specified addresses, from 1995 through the present. You claim that the requested information is excepted from disclosure under sections 552.108, 552.111, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

As a preliminary matter, you have not submitted any information responsive to the request for minutes of monthly meetings, nor have you raised any exceptions to its disclosure. Therefore, we assume that, to the extent the city possesses such information, it has been released to the requestor. If not, you must release it immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances).

Next, with respect to the submitted information, we must address the city's obligations under section 552.301 of the Government Code. Sections 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 [Public Information 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 tenth business day after the date of receiving the written request.

You indicate that the city received this request for information on December 10, 2002. You have confirmed that December 24, December 25, and January 1 were city holidays. You submitted your request for a decision from this office on December 30, 2002. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(b) of the Government Code. Because the request for a decision was not timely submitted, the requested information is presumed to be public information. Gov't Code § 552.302.

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).

Section 552.111 of the Government Code is a discretionary exception that protects a governmental body's interests and may be waived by the governmental body. Thus, section 552.111 does not demonstrate a compelling reason to withhold information from the public. *See* Open Records Decision No. 473 (1987) (governmental body may waive section 552.111); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Furthermore, you do not demonstrate a compelling reason to withhold information under section 552.108. *See* Open Records Decision No. 586 (1991) (need of another governmental body to withhold information from disclosure provides compelling reason under section 552.108). We therefore determine that the city may not withhold the submitted information pursuant to section 552.108 or section 552.111.

Section 552.137, however, protects the interests of third parties and does provide a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 630 (1994) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). We will therefore address your arguments under section 552.137.

Section 552.137 provides:

- (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.

You advise that the members of the public whose e-mail addresses you have marked in Exhibit 5 have not affirmatively consented to the release of their e-mail addresses. Therefore, the city must withhold the marked e-mail addresses under section 552.137 of the Government Code.

We also note that the submitted information contains Texas driver's license numbers. Section 552.130 of the Government Code provides in relevant part:

- (a) Information is excepted from the requirement of Section 552.021 if the information relates to:
  - (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
  - (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas driver's license numbers we have marked pursuant to section 552.130 of the Government Code.

In summary, the city must withhold the marked e-mail addresses in Exhibit 5 pursuant to section 552.137 of the Government Code. The city must withhold Texas driver's license numbers under section 552.130 of the Government Code. The remainder of the 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 Dep't of Pub. 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,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 177624

Enc: Submitted documents

c: Mr. Charles Latimer  
10158 Long Point  
Houston, Texas 77043  
(w/o enclosures)