



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 3, 2003

Ms. J. Kay Trostle
Sifuentes, Drummond & Smith, L.L.P.
1002 West Avenue, Suite 200
Austin, Texas 78701

OR2003-3777

Dear Ms. Trostle:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182087.

The City of Clarksville City (the "city"), which you represent, received a request for, among other things, audio tape recordings of certain city council meetings. You indicate that most of the requested information will be released. You contend, however, that a portion of one of the requested tape recordings is excepted from disclosure pursuant to section 552.107(1) of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Although you contend that a portion of the tape recording at issue is excepted from required public disclosure under the Public Information Act, we conclude in this instance that the release of the requested tape recording is governed by the Open Meetings Act, chapter 551 of the Government Code. You explain that during the public portion of the city council meeting "Clarksville City's Council inadvertently deviated from its normal course of business and failed to either announce its [planned] executive session or to turn off its tape recording equipment before it began its conference call with its under signed counsel." Consequently, the tape recording you submitted to this office does not constitute a recording of a closed executive session made confidential under section 551.104(c) of the Government Code; rather, it is a tape recording of a public meeting. See Gov't Code § 551.101 (to conduct closed meeting, governmental body must first meet in open session and announce that closed meeting will be held). In this regard, we note that you do not contend that the portion of the

tape recording you seek to withhold constitutes a “certified agenda” or tape recording of an executive session made confidential under section 551.104(c) of the Government Code.

Tape recordings of a governmental body’s public meetings are specifically made public by statute. *See* Gov’t Code § 551.022. Information specifically made public by statute may not be withheld from the public by any of the Public Information Act’s exceptions to public disclosure. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Because the tape recording is made public under section 551.022, we conclude that the city must release the tape recording at issue in its entirety.

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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/seg

Ref: ID# 182087

Enc: Submitted documents

c: Ms. Sharon G. Johnson
City Manager
City of Gladewater
P.O. Box 551
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(w/o enclosures)