



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 20, 2004

Mr. Terrence S. Welch  
Brown & Hofmeister, LLP  
1717 Main Street, Suite 4300  
Dallas, Texas 75201

OR2004-1268

Dear Mr. Welch:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 196484.

The City of Highland Village (the "city") received a request for a copy of the settlement agreement between the city and a named individual. You assert that the responsive settlement agreement is not public information. In the alternative, you claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

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." Gov't Code § 552.002(a). Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987); *cf.* Open Records Decision No. 499 (1988) (relevant facts in determining whether information held by consultant is subject to the Act are whether: (1) information relates to governmental body's official business; (2) consultant acts as agent of governmental body in collecting information; and (3) governmental body has or is entitled to access to information). Where a third party has prepared information on behalf of a governmental body, the information is subject to the Act, even though it is not in the governmental body's custody. Open Records Decision No. 558 (1990). Moreover, if a governmental entity employs an agent to carry out a task that otherwise would have been performed by the entity itself, information relating to that task that has been assembled or maintained by the agent is subject to disclosure. Open Records Decision No. 518 (1989).

The settlement agreement at issue arose out of a suit against the city. Although the city is not a named party to the agreement, the agreement binds the city by requiring it to take specific action to fulfill the agreement. Additionally, the agreement provides for release of all claims against the city and its agents. Thus, the settlement agreement relates to the transaction of official city business. You state that an attorney for the city's insurance carrier maintains the agreement, but the city does not maintain a copy of the agreement and will not do so in the future. However, you acknowledge that this attorney represented the city in the lawsuit and negotiation of the agreement. The agreement was created in furtherance of the insurance carrier's performance of services for and on behalf of the city. Accordingly, we conclude that the settlement agreement, while not in the city's custody, is public information subject to disclosure under the Act, and will address your claimed exception thereunder.

You claim that certain personal financial information within the agreement is protected from disclosure by the common-law right of privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the common-law right of privacy. Information is protected by the common-law right of privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert denied*, 430 U.S. 931 (1977); *see also* Open Records Decision No. 611 at 1 (1992). Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). Based upon our careful review of the submitted records, we find that there is a legitimate public interest in the financial terms of an agreement that disposes of a lawsuit against the city and requires the city to take certain action in furtherance of the agreement. *See generally* Open Records Decision No. 444 (1986) (public has legitimate interest in information relating to promotion, demotion, resignation or termination of public employee). Thus, we conclude that none of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy. As you have not claimed any other exceptions, the submitted information must be released.

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,



Lauren E. Kleine  
Assistant Attorney General  
Open Records Division

LEK/seg

Ref: ID# 196484

Enc. Submitted documents

c: Ms. Lesley A. Tellez  
The Dallas Morning News  
Denton County Bureau  
P.O. Box 655237  
Dallas, Texas 75265  
(w/o enclosures)