ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2004

Mr. Kuruvilla Oommen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2004-4081

Dear Mr. Oommen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 201785.

The City of Houston (the "city") received a request for all licensing information for a named individual working in a sexually oriented business. You claim that the information in Exhibit 2 is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that the information in Exhibit 2 is confidential under the decision in *N.W. Enterprises, Inc. v. City of Houston*, 27 F.Supp.2d 754 (S.D. Tex. 1998), *aff'd in part, rev'd in part, dism'd in part*, 352 F.3d 162 (5th Cir. 2003). As you are aware, at issue in that case was a city ordinance regulating sexually oriented businesses and specifying the personal information required of individuals applying for permits to work as managers or entertainers in such businesses. *See* 27 F.Supp.2d at 836. In prohibiting the public release of information relating to the permit applications, the federal district court concluded:

> [T]here is meaningful potential danger to individuals working in sexually oriented businesses if the information in their permit applications is disclosed to the public. The Court concludes further that the potential for disclosure is likely to have a chilling effect on the applicants' protected speech. These dangerous and chilling effects are sufficiently severe that the information should be held confidential by the city.

Id. at 843. In its decision in this case on appeal, the Fifth Circuit upheld the district court's finding that information on entertainer and manager permit applications is confidential under the Public Information Act. *See N.W. Enterprises, Inc.*, 352 F.3d at 195. Exhibit 2 consists of a "Sexually Oriented Business Manager and Entertainer License Application" filed with the city. Therefore, we agree that the information in Exhibit 2 is confidential under the decision in *N.W. Enterprises*. *Id.* Accordingly, the city must withhold the information in its entirety under section 552.101 of the Government Code.[1]

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).

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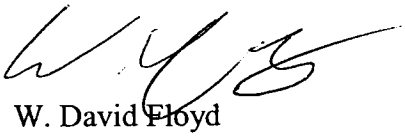
[1]Because we have resolved this issue under section 552.101, we need not address your claim under section 552.130 of the Government Code.

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. David Floyd
Assistant Attorney General
Open Records Division

WDF/sdk

Ref: ID# 201785

Enc. Submitted documents

c: Mr. Wyatt Matthew Watson
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El Paso, Texas 79904
(w/o enclosures)