



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 2, 2004

Mr. Robert R. Ray  
Assistant City Attorney  
City of Longview  
P.O. Box 1952  
Longview, Texas 75606-1952

OR2004-6492

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206280.

The City of Longview (the "city") received a request for information regarding 100 Acres of Heritage/Alley Fest, including (1) applications and supporting documents submitted to the city to apply for a grant or other monetary support for the 1999 to 2003 Alley Fests; (2) evaluations or reviews conducted by the city or any city committee of how monetary support of Alley Fest was used; and (3) correspondence between the city, 100 Acres of Heritage/Alley Fest or the Longview Partnership concerning Alley Fest's current financial situation or difficulties. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.<sup>1</sup>

We first note that a small amount of the submitted information is not responsive to this request for information. The Public Information Act (the "Act"), chapter 552 of the Government Code, does not require the city to release information that did not exist when

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<sup>1</sup>Although you have marked information that you seek to withhold under sections 552.136 and 552.137, you failed to raise these exceptions within the deadline prescribed by section 552.301. See Gov't Code §§ 552.301, .302. Nevertheless, we will address sections 552.136 and 552.137, as they are mandatory exceptions to disclosure that a governmental body may not waive. See *id.* §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001).

it received this request or to create responsive information. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983). We have marked information that did not exist when the city received this request. This decision does not address the public availability of that information, and it need not be released.

We next note that the submitted information includes copies of city council resolutions. In Open Records Decision No. 551 (1990), this office addressed whether a city ordinance could be withheld from the public under the Act, stating:

It is difficult to conceive of a more open record. The law, binding upon every citizen, is free for publication to all. *Banks v. Manchester*, 128 U.S. 244, 253 (1888). This policy is based on the concept of due process which requires that the people have notice of the law. *Building Officials & Code Admin. v. Code Technology, Inc.*, 628 F.2d 730, 734 (1st Cir. 1980). Given this constitutional consideration, it is difficult to hypothesize a circumstance that would bring a law or ordinance within an exception to public disclosure.

We believe that the submitted city council resolutions are analogous to an ordinance. Accordingly, the city council resolutions that we have marked must be released to the requestor.

The submitted documents also include information that is subject to section 552.022 of the Government Code. Section 552.022(a) provides in part that

[w]ithout limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body; except as provided by Section 552.108; [and]

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(1), (3). In this instance, the submitted documents include completed evaluations made of, or, or by a governmental body. The city must release the

evaluations under section 552.022(a)(1) unless they contain information that is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. The submitted documents also include account, contract, and voucher information that relates to the receipt or expenditure of public or other funds by a governmental body. The city must release that information under section 552.022(a)(3) unless it is expressly confidential under other law.

Sections 552.103 and 552.108 of the Government Code are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (Gov't Code § 552.103 may be waived); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to Gov't Code § 552.103 subject to waiver), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 may be waived). As such, sections 552.103 and 552.108 do not constitute other law that makes information confidential for the purposes of section 552.022. Therefore, the city may not withhold any of the submitted information that is subject to section 552.022(a)(1) or (a)(3) under section 552.103. Likewise, the city may not withhold any of the submitted information that is subject to section 552.022(a)(3) under section 552.108. We will address your section 552.108 claim with regard to the section 552.022(a)(1) information and the submitted information that is not subject to section 552.022. We will consider your other claimed exceptions with regard to the information that is subject to section 552.022(a)(3).

Section 552.108 excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain, this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Where a non-law enforcement agency is in the custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement entity that it wishes to withhold the information.

You inform us that the submitted information has been forwarded to the Gregg County District Attorney's Office. You also state that the district attorney's office has asked the city to claim the law enforcement exception with regard to this information. We also received a letter from the district attorney's office, stating that the release of the submitted information at this time would interfere with the investigation, detection, and prosecution of crime. Based on these representations, we find that section 552.108(a)(1) is applicable in this

instance. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). We therefore conclude that the city may withhold the completed evaluations that are subject to section 552.022(a)(1) and all of the submitted information that is not subject to section 552.022 under section 552.108.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception protects information that is considered to be confidential under other constitutional, statutory, or decisional law. *See Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy)*. You have asserted no law, and this office is not aware of any law, under which any of the information at issue is considered to be confidential for purposes of section 552.101. Therefore, the city may not withhold any of the submitted information under section 552.101.

Section 552.136 is applicable to certain account numbers and other “access devices.” This exception provides as follows:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov’t Code § 552.136. We have marked account numbers that the city must withhold under section 552.136.

Section 552.137 is applicable to certain e-mail addresses. As amended by the 78<sup>th</sup> Legislature, this section provides as follows:

(a) Except as otherwise provided by this section, 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.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Section 552.137 excepts certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. Section 552.137 does not apply to the types of e-mail addresses listed in section 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. In this instance, all of the e-mail addresses that you have marked for withholding are encompassed by section 552.137(c). Therefore, the city may not withhold any of the marked e-mail addresses under section 552.137.

In summary: (1) the city may withhold the marked evaluations that are subject to section 552.022(a)(1) and all of the submitted information that is not subject to section 552.022 under section 552.108(a)(1); and (2) the city must withhold the marked account number

information under section 552.136. The rest of the submitted information must be released. As we are able to make these determinations, we need not address your other arguments against disclosure.

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).

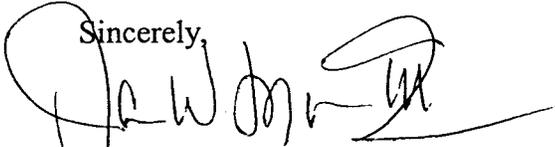
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a large, stylized flourish extending from the end of the signature.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 206280

Enc: Submitted documents

c: Ms. Jo Lee Ferguson  
Longview News-Journal  
P.O. Box 1792  
Longview, Texas 75606-1792  
(w/o enclosures)