



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2005

Mr. Cary L. Bovey
Bovey, Akers & Bojorquez, LLP
12325 Hymeadow Drive, Suite 3-200
Austin, Texas 78750

OR2005-06408

Dear Mr. Bovey:

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# 228442.

The City of Bartlett (the "city"), which you represent, received a request for a list of municipalities that employ the city's attorney. You indicate that the city does not have possession of or access to the requested information. You therefore contend the city is not required to release any information to the requestor.

A governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. Open Records Decision No. 561 (1990). However, the Act generally does not require a governmental body to obtain information not in its possession or create new information in response to an open records request. *See* Open Records Decision Nos. 599 (1992), 534 (1989). You state that the city's attorney is "a partner in a private law firm" which provides legal services to the city. You indicate that the city's attorney maintains the responsive information in his private files at his law firm. You further indicate that the city does not have possession of or a right of access to the responsive information. *See* Gov't Code § 552.002 ("Public information" subject to disclosure under Act includes information collected, assembled, or maintained by governmental body, or to which governmental body has right of access). Thus, based on your representations that the city does not possess any responsive information and does not have a right of access to any responsive information that may be in the hands of the city's attorney, we conclude that the city need not further respond to this request. *See generally*

Open Records Decision No. 635 (1995) (stating certain factors that are considered when determining whether information is subject to the Act).

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 'JAP', written in a cursive style.

James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 228442

c: Ms. Lana Hill
P.O. Box 95
Bartlett, Texas 76511