



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 16, 2005

Ms. Myrna S. Reingold  
Galveston County  
123 Rosenberg, Suite 4127  
Galveston, Texas 77550-1454

OR2005-08466

Dear Ms. Reingold:

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# 232321.

The Galveston County Health District (the "district") received a request for information pertaining to a named sexually-oriented business. You state that the district has released some of the requested information but claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.136 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 requested information is confidential under the decision in *N.W. Enterprises, Inc. v. City of Houston*, 352 F.3d 162 (5th Cir. 2003). The question in *N.W. Enterprises* was the constitutionality of an ordinance of the City of Houston regulating sexually-oriented businesses and specifying the personal information required of individuals applying for permits to work as managers or entertainers in such businesses. With regard to the required public disclosure under the Act of certain information provided by entertainers and managers in their permit applications, the district court in *N.W. Enterprises* concluded that

[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. (Footnote omitted). These dangerous and chilling effects are sufficiently severe that the information should be held confidential by the city.

*N.W. Enterprises, Inc. v. City of Houston*, 27 F.Supp.2d 754, 843 (S.D.Tex.1998). The Fifth Circuit Court of Appeals, in upholding the confidentiality determination of the district court, stated that "[b]ecause the district court declared the information on entertainer and manager permit applications confidential under the [Act], the City cannot disclose it to the public." *N.W. Enters.*, 352 F.3d at 195. The appellate court also agreed that the entertainers' and managers' home addresses and telephone numbers are confidential. *Id.* Thus, pursuant to that decision, information revealing the identity of an entertainer or manager of a sexually-oriented business, including the entertainer or manager's home address and telephone number, is generally confidential. Portions of the submitted information reveal the type of information protected in *N.W. Enterprises*. Therefore, this identifying information, which we have marked, must be withheld under section 552.101 in conjunction with the court's holding in *N.W. Enterprises*. However, *N.W. Enterprises* did not address the confidentiality of some of the information you have marked. Thus, we find that the remaining information, including the business names, names of the business owners, business addresses, and business telephone numbers, is not confidential under the decision in *N.W. Enterprises*. Accordingly, the remaining information may not be withheld under section 552.101 on that ground.

However, the remaining documents contain Texas-issued motor vehicle record information that is excepted from disclosure under section 552.130 of the Government Code. This section provides in pertinent part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. We have marked the Texas-issued motor vehicle record information that must be withheld under section 552.130.

The remaining documents contain account numbers. Section 552.136 of the Government Code states that "[n]otwithstanding 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. The district must, therefore, withhold the marked account numbers under section 552.136.

In summary, the district must withhold the information we have marked under section 552.101 in conjunction with the decision in *N.W. Enterprises*. We have marked Texas-issued motor vehicle record information that must be withheld under section 552.130 of the Government Code. We have also marked an account number that must be withheld under section 552.136 of the Government Code. The remaining information must be released to the requestor.

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 Office of the Attorney General 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. 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 that reads "L. Joseph James". The signature is written in a cursive style with a large initial "L".

L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/seg

Ref: ID# 232321

Enc. Submitted documents

c: Mr. James M. Bennett  
Attorney at Law  
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Dickinson, Texas 77539  
(w/o enclosures)