ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2005

Ms. Veronica Ocañas
Assistant City Attorney
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR2005-10045

Dear Ms. Ocañas:

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# 235781.

The City of Corpus Christi (the "city") received a request for the certified agenda for a specific city council executive session and information related to a specified donation to and/or purchase by the city. You state that you have provided the requestor with most of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.104, and 552.111 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," and encompasses information protected by other statutes. Gov't Code § 551.101. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Gov't Code § 551.104(c). Such information cannot be released to a member of the public in response to an open records request.[1] *See* Open Records Decision No. 495 (1988). You inform us that the information responsive to the first

[1]As you acknowledge, the city is not required to submit the certified agenda or tape recording of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101 of the Government Code).

portion of this request includes the certified agenda of a closed executive session of the city council. We agree that the certified agenda of an executive session of the city council must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 551.073 and 551.087 of the Government Code. Section 551.073 allows a governmental body to conduct a closed meeting to deliberate a negotiated contract for a prospective gift or donation. *See* Gov't Code § 551.073. Section 551.087 allows a governmental body to conduct a closed meeting to deliberate economic development negotiations. *See* Gov't Code § 551.087. These sections are not exceptions to disclosure under the Act; rather, they are provisions of the Open Meetings Act which provide that a government body may conduct closed meetings when deliberating prospective gifts or economic development. *See* Gov't Code §§ 551.073, .087. Sections 551.073 and 551.087 do not make information expressly confidential. *See* Open Records Decision Nos. 478 at 2 (1987) (stating that as a general rule, statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public), 658 at 4 (1998) (stating that statutory confidentiality provision must be express, and a confidentiality requirement will not be implied from the statutory structure). Therefore, the submitted information cannot be withheld under section 552.101 in conjunction with sections 551.073 or 551.087.

We now turn to your claim regarding section 552.104 of the Government Code. Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." *See* Gov't Code § 552.104(a). The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a bidder or competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. Open Records Decision Nos. 306 (1982), 184 (1978). Upon review, we find that you have not demonstrated that the city is engaged in a specific open bidding situation, or otherwise engaged in a particular competitive situation for purposes of section 552.104. Gov't Code § 552.301(e)(1)(A) (requiring a governmental body to explain applicability of exception). Therefore, the city may not withhold the submitted information under section 552.104.

You also claim section 552.111 of the Government Code as an exception to disclosure for the submitted information. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Gov't Code § 552.111. In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting

of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body. Open Records Decision No. 615 at 5-6 (1993). An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *See Arlington Indep. Sch. Dist. v. Texas Atty. Gen.*, 37 S.W.3d 152, 160 (Tex. App.— Austin 2001, no writ); Open Records Decision No. 615 at 4-5.

We understand that the information you seek to withhold under section 552.111 consists of internal communications pertaining to policymaking matters of the city. Upon review, we agree that the information you have highlighted contains advice, recommendations and opinions reflecting the policymaking processes of the city. Accordingly, the information that you have highlighted in Exhibit A is excepted from disclosure under section 552.111 and may be withheld on that basis.

In summary, the certified agenda of an executive session of the city council must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code. The city may withhold the information you have highlighted pursuant to section 552.111 of the Government Code. The city must release the remaining submitted information in Exhibit A 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

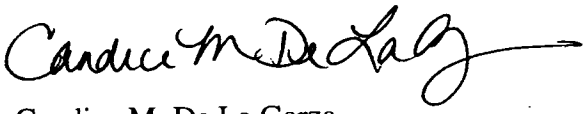
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID#235781

Enc. Submitted documents

c: Mr. J. Andres Araiza
General Assignments Reporter
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(w/o enclosures)