



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

January 4, 2006

Mr. Ignaico Perez  
Assistant City Attorney  
City of McAllen  
P.O. Box 220  
McAllen, Texas 78505-0220

OR2006-00073

Dear Mr. Perez:

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# 239470.

The City of McAllen (the "city") received a request for (1) any agenda item authorizing the city to sue the Attorney General regarding hazardous material operating standards; (2) a copy of a videotape recording in which the city commission voted to authorize the expenditure of city tax dollars to sue the Attorney General; (3) a copy of the executive board agenda where the discussion of suing the Attorney General was listed, and (4) any and all documents presented to the city commission regarding the reason for suing the Texas Attorney General regarding the fire department hazardous material standard operating procedures. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state that the submitted information was previously addressed by this office in Open Records Letter No. 2005-07586 (2005). The city currently has a lawsuit pending against the Office of the Attorney General over the release of this information, *City of McAllen v. Abbott*, Cause No. GV504140, 345<sup>th</sup> District Court of Travis County, Texas. Accordingly, we are closing our file with regard to the submitted hazardous material operating procedures without issuing a decision and will allow the trial court to determine whether the operating procedures at issue must be released to the public.

We now address your claims for the remaining requested 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.<sup>1</sup> See Open Records Decision No. 495 (1988). You inform us that the information responsive to the remaining portions of this request include certified agendas of closed executive sessions of the city council and tapes of such meetings. We agree that the certified agenda of an executive session of the city council and tape recordings of such meetings must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.<sup>2</sup>

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

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<sup>1</sup>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).

<sup>2</sup>As our ruling on this issue is dispositive, we need not address your remaining arguments against disclosure.

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,



Matthew T. McLain  
Assistant Attorney General  
Open Records Division

MM/jh

Ref: ID# 239661

Enc. Submitted documents

c: Ms. Patsy Rogers  
Citizens for a Better and Safer McAllen  
7506 Chivalry  
San Antonio, Texas 78254  
(w/o enclosures)