ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 6, 2006

Ms. Cary Grace
Assistant City Attorney
City of Austin
P. O. Box 1088
Austin, Texas 78767-1088

OR2006-01171

Dear Ms. Grace:

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# 244654.

The City of Austin (the "city") received a request for the "petition, proceedings, negotiation and settlement documents regarding a suit appealing City Council approved zoning restrictions" for a specified zoning case. You state that the city will release some of the requested information but claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered your arguments and reviewed the submitted information, some of which consists of representative samples of information.[1]

You inform us that the submitted information is identical to information that was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2003-4688 (2003). In that ruling, we concluded that the city may withhold the information at issue under section 552.103 of the Government Code. Because you state that there has not been a change in the law, facts, or circumstances on which the prior ruling was based, we conclude that the city may continue to rely on our decision in Open Records Letter No. 2003-4688 with respect to the submitted information here. *See* Gov't Code § 552.301(f);

[1]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Open Records Decision No. 673 (2001) (setting forth the four criteria for a "previous determination).[2]

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 ten 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

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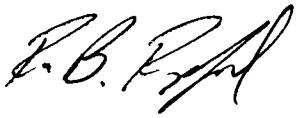
[2]The four criteria for this type of "previous determination" are (1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; (2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; (3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and (4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 244654

Enc. Submitted documents

c: Mr. Skip Cameron
President
Bull Creek Foundation
8711 Bluegrass Drive
Austin, Texas 78759-7801
(w/o enclosures)