



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 3, 2006

Mr. Jack Steele  
Office of the Executive Director  
Houston-Galveston Area Council  
P.O. Box 22777  
Houston, Texas 77227

OR2006-04543

Dear Mr. Steele:

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# 247847.

The Houston-Galveston Area Council (the "council") received a request for information related to RFP# TRN 06-4662-05.<sup>1</sup> You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the council's obligations under section 552.301 of the Government Code. Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See* Gov't Code § 552.301(e)(1)(A)-(D). In this case, you have not provided this office with a copy of the written request for information. We therefore find that the council failed to comply with the procedural requirements of section 552.301.

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<sup>1</sup>As you have not submitted the request for information, we take our description from your brief.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982).

Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third-party interests. *See* Open Records Decision No. 630 (1994). Section 552.104 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and may be waived by the governmental body. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 592 at 8 (1991) (statutory predecessor to section 552.104 subject to waiver). As such, this section does not demonstrate a compelling reason to withhold the submitted information from the public. We therefore determine the council may not withhold the submitted information pursuant to section 552.104 of the Government Code.

We note, however, that the submitted documents contain information that is excepted from disclosure under sections 552.130, 552.136, and 552.137 of the Government Code.<sup>2</sup> Section 552.130(a)(1) of the Government Code requires a governmental body to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." We have reviewed the submitted information and marked the Texas motor vehicle record information that must be withheld under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions like sections 552.130, 552.136, and 552.137 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. We have reviewed the submitted information and marked insurance policy numbers that must be withheld pursuant to section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses we have marked do not appear to be of a type specifically excluded by section 552.137(c). Therefore, the council must withhold the e-mail addresses we have marked in accordance with section 552.137 unless the council receives consent for their release.

Finally, we note that some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the council must withhold the information we have marked under sections 552.130, 552.136, and 552.137 of the Government Code. The remaining information must be released to the requestor. However, any information protected by copyright must only be released in accordance with applicable copyright laws.

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).

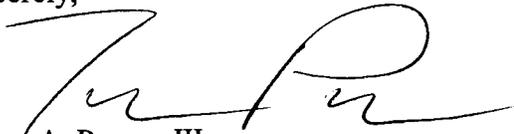
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



James A. Person III  
Assistant Attorney General  
Open Records Division

JAP/sdk

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Enc. Submitted documents

c: Mr. Mike Breslin  
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(w/o enclosures)