ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 31, 2006

Ms. Charlotte L. Staples
Taylor Olson Adkins Sralla Elam L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2006-05697

Dear Ms. Staples:

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# 250385.

The City of Southlake (the "city"), which you represent, received a request for the following documents: "(1) [a]ll tapes, videos, written minutes, etc. from [city] council meetings, planning and zoning meetings and park board meetings regarding [a specific location;] (2) [a l]ist of all development projects approved by the [city] within the last five (5) years with stacking variances along with any correspondence regarding same[;] (3) [a l]ist of all development projects denied by the [city] within the last (5) five years with stacking variances along with any correspondence regarding same[; and] (4) [a]ny and all correspondence regarding [a specific location] along with any city staff comments." You state you will release a portion of the information responsive to category one and all of the information responsive to categories two and three of the request to the requestor. You claim, however, that the remaining information is excepted from disclosure under section 552.101 of the Government Code.[1]

[1] Although you also initially raised sections 552.103, 552.104, 552.105, 552.107, 552.109, 552.111, 552.117, 552.131, 552.136, and 552.137 of the Government Code, you have not provided any arguments in support of these claims. Thus, the city has waived its claims under sections 552.103, 552.104, 552.105, 552.107, 552.109, 552.111, and 552.131(b). *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general). Further, the city has not demonstrated that any of the submitted information is confidential for purposes of sections 552.117, 552.131(a), 552.136 or 552.137. *See* Gov't Code §§ 552.301, .302.

Section 552.101 of the Government Code excepts from disclosure information deemed confidential by law. Gov't Code § 552.101. 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).*"(Emphasis added.) Thus, such information cannot be released to a member of the public in response to an open records request.[2] *See* Open Records Decision No. 495 (1988). The city must withhold the information pertaining to executive sessions of the city council from public disclosure under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

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

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[2]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).

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,

Anne Prentice
Assistant Attorney General
Open Records Division

AP/sdk

Ref: ID# 250385

Enc. Submitted documents

c: Mr. Thomas Stephen
Thomas Stephen & Company, L.L.P.
250 West Southlake Boulevard, Suite 250
Southlake, Texas 76092
(w/o enclosures)