



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 20, 2006

Mr. Ray R. Ortiz
Jones, Andrews & Ortiz
10100 Reunion Place, Suite 600
San Antonio, Texas 78216

OR2006-06439

Dear Mr. Ortiz:

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# 255815.

The City of Converse (the "city"), which you represent, received a request for "the minutes and agenda and any recordings (visual and audio) for the Board of Inquiry" from 2004. You inform us that there are no minutes or agendas from the meetings at issue.¹ You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. 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)." Thus, such information cannot be released to a member of the public in response to an open records request. See Open Records Decision No. 495 (1988). You inform us that the submitted information consists of recordings of a closed executive session of the Board of Inquiry;

¹We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

therefore, the city must withhold the submitted recordings from public disclosure under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.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 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).

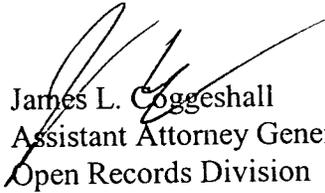
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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.

²As we are able to resolve this under section 552.101, we do not address your other argument for exception of the submitted information.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/vh2

Ref: ID# 255815

Enc. Submitted documents

c: Mr. Jim Evans
9933 Flatland Trail
Converse, Texas 78109-1608
(w/o enclosures)