ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 4, 2006

Mr. Michael Morris
City of Ingleside
5350 South Staples, Ste. 222
Corpus Christi, Texas 78411-4684

OR2006-08758

Dear Mr. Morris:

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# 255875.

The City of Ingleside (the "city"), which you represent, received a request for e-mails or memos between a named former employee and city staff or council members, as well as budget documents outlining expenditures and revenue for the city 4b tax funds. You state that you have released some of the requested information to the requestor. You state that the city's budget documents appear on the city's website. This office has determined that a governmental body may refer a requestor to its website for requested public information if the requestor agrees to accept the information in such a manner. *See* Open Records Decision No. 682 at 7 (2005). However, if the requestor does not agree to such a provision of information, then the city must provide the requestor with paper copies of the information. *See* Gov't Code § 552.221(b) (a governmental body must provide the public information for inspection or duplication in its offices or send copies by first class United States mail to the requestor). You claim that the remaining requested information is not public information subject to the Act. We have considered your claim and reviewed the submitted information.

You claim that the submitted information is not public information because it was delivered to private residences or private e-mail accounts of city officials. You also state that one of the documents was written after the named employee had resigned his position with the city. Finally, you state that none of the information was solicited by the city and it was not used in the transaction of official city business. Section 552.002 of the Government Code defines "public information" as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business [.]" *Id.* § 552.002.

Information is generally public information within the Act when it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties. *See* Open Records Decision No. 635 at 4 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving de minimis use of state resources). Further, the characterization of information as "public information" under the Act is not dependent on whether the requested records are in the possession of an individual or whether a governmental body has a particular policy or procedure that establishes a governmental body's access to the information. *See id.* at 3-4 (finding that information does not fall outside definition of "public information" in Act merely because individual member of governmental body possesses information rather than governmental body as whole); *see also* Open Records Decision No. 425 (1985) (concluding, among other things, that information sent to individual school trustees' homes was public information because it related to official business of governmental body) (overruled on other grounds by Open Records Decision No. 439 (1986)).

In this instance, Item 1b consists of e-mails exchanged between multiple persons. The recipients of the e-mails are addressed in their personal capacities. Further, the content of the e-mails is strictly personal in nature and does not relate to the official business of the city. Therefore, we find that Item 1b does not constitute public information as defined by section 552.022 of the Government Code. Accordingly, the city is not required to disclose Item 1b under the Act.

Conversely, Item 1a is a memorandum addressed to the mayor and members of the city council in their official capacities. Although we acknowledge that the document was created after the employee's resignation, the content of the memorandum pertains solely to the former employee's duties, work conditions, and the reasons for his resignation. Further, even though the memorandum was delivered unsolicited to the private residences of the mayor and city council members, we find that it relates solely to the official business of the city. Thus, Item 1a constitutes public information as defined by section 552.002 of the Government Code. *See* ORD Nos. 635, 425. Consequently, the city may only withhold Item 1a from the requestor if it is excepted from disclosure pursuant to a provision of the Act.

We note that portions of Item 1a may be protected by section 552.117 of the Government Code.[1] Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code

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[1]The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

§ 552.117(a)(1). However, information subject to section 552.117(a)(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). In this case, you do not inform us nor provide documentation showing that the former employee timely elected confidentiality under section 552.024. Thus, if the former employee timely elected to keep his personal information confidential, you must withhold this information, which we have marked, under section 552.117(a)(1) of the Government Code. The city may not withhold this information under section 552.117(a)(1) if this former employee did not make a timely election to keep the information confidential. As the city does not raise any exceptions against disclosure, the remaining information in Item 1b must be released to the requestor.

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,

Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/ir

Ref: ID# 255875

Enc. Submitted documents

c: Beth Wilson
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(w/o enclosures)