



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2006

Mr. David Caylor
City Attorney
City of Irving
825 West Irving Blvd.
Irving, Texas 75060

OR2006-13029

Dear Mr. Caylor:

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# 263686.

The City of Irving (the "city") received a request for a copy of any check used by the city to pay for a specified mediation and a copy of any invoice or similar record used to justify the expenditure. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (permitting submission of comments as to why information should or should not be released).

We first note that a portion of the submitted information has been filed with a court. A document that has been filed with a court is expressly made public under section 552.022 of the Government Code and may not be withheld unless it is confidential under other law. *See* Gov't Code § 552.022(a)(17). We further note that the remainder of the submitted information pertains to the expenditure of funds by a governmental body. Section 552.022(a)(3) of the Government Code provides that "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body" is public unless expressly made confidential under other law. *Id.* at 552.022(a)(3). Although you assert that these documents are excepted under section 552.103 of the Government Code, this section is a discretionary exception to

disclosure that protect a governmental body's interests and may thus be waived by the governmental body. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, section 552.103 does not constitute other law for purposes of section 552.022, and the city may not withhold the submitted information on these grounds.

We note, however, that section 552.136 of the Government Code, which does constitute "other law" for purposes of section 552.022, is applicable to some of the submitted information.¹ Section 552.136(b) states that "[n]otwithstanding 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." The city must withhold the information we have marked under section 552.136.

In summary, the city must release the submitted information under section 552.022 of the Government Code. The city must withhold the information we have marked under section 552.136.

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

¹This office will raise section 552.136 on behalf of a governmental body, as it is a mandatory exception and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

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,



Alix K. Cornett
Assistant Attorney General
Open Records Division

AKC/krl

Ref: ID# 263686

Enc. Submitted documents

c: Mr. S. Paul Jordan
1519 Arcady Lane
Irving, Texas 75061
(w/o enclosures)