



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 8, 2007

Mr. Rene Ruiz  
Cox Smith Matthews  
VIA Metropolitan Transit Authority  
112 East Pecan Street, Suite 1800  
San Antonio, Texas 78205

OR2007-00220

Dear Mr. Ruiz:

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# 268565.

The VIA Metropolitan Transit Authority (the "transit authority"), which you represent, received a request for the sworn responses that each of the eleven members of the transit authority's board of trustees submitted to the Texas Ethics Commission (the "commission") in connection with a sworn complaint filed by the requestor with the commission. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, you claim that the submitted information is not subject to the Act pursuant to section 571.139(a) of the Government Code. Section 571.139 provides in relevant part:

(a) . . . Chapter 552 does not apply to documents or any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion.

Gov't Code § 571.139(a). Alternatively, you claim that the submitted information is confidential under section 552.101 of the Government Code in conjunction with section 571.140 of the Government Code. Section 571.140 provides:

(a) Except as provided by Subsection (b), proceedings at a preliminary review or informal hearing performed by the commission, a sworn complaint, and documents and any additional evidence relating to the processing, preliminary review, informal hearing, or resolution of a sworn complaint or motion are confidential and may not be disclosed unless entered into the record of a formal hearing or a judicial proceeding, except that a document or statement that was previously public information remains public information.

(b) An order issued by the commission after the completion of a preliminary review or an informal hearing determining that a violation other than a technical or de minimis violation has occurred is not confidential.

Gov't Code § 571.140(a), (b). You state that the submitted information is the transit authority's response to a sworn complaint and assert that in accordance with section 571.139 the submitted information is not subject to the Act. Alternatively, you argue that if the information is subject to the Act, it is confidential under section 571.140. In Ethics Advisory Opinion No. 8 (1992), the commission considered whether section 571.140 acts as broad prohibition against disclosure of an ethics complaint and related documents. Guided by federal court cases interpreting similar provisions, the commission determined that such a broad restriction would violate the First Amendment to the United States Constitution. Ethics Advisory Opinion No. 8 at 2-4 (1992) (citing *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829 (1978) (law allowing criminal prosecution of newspaper for printing information about complaint proceedings was unconstitutional); *Doe v. Gonzalez*, 723 F. Supp. 690 (S.D. Fla. 1988) *aff'd* 886 F.2d 1323 (11th Cir. Fla. 1989) (statute prohibiting complainant from discussing ethics complaint was unconstitutional); *Providence Journal Co. v. Newton*, 723 F. Supp. 846 (D.R.I. 1989) (law prohibiting all public discussion of ethics complaint was unconstitutional)). Instead, the commission construed the confidentiality provision to apply only to its own members and staff and not to third parties. Thus, we will defer to the commission's interpretation of its own statute in this situation.<sup>1</sup> See *Tex. Water Comm'n v. Brushy Creek Mun. Util. Dist.*, 917 S.W.2d 19, 21 (Tex. 1996) (“[T]he construction of a statute by an agency charged with its execution is entitled to serious consideration unless the agency's construction is clearly inconsistent with the Legislature's intent.”); see also Attorney General Opinions JC-0114 at 2 (1999) (same), JM-1212 at 8 (1990) (same). Accordingly, we find that neither section 571.139 nor section 571.140 applies to the submitted information in the hands of the transit authority. Thus, we will address your remaining arguments against disclosure.

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<sup>1</sup>In the opinion, the commission clearly indicates that it construed the statute narrowly “because a statute is to be construed in a manner that renders it constitutional.” Ethics Advisory Opinion No. 8 at 4 (1992) (citing *State v. Shoppers World, Inc.*, 380 S.W.2d 107, 111 (Tex. 1964); *Earle v. Program Centers of Grace Union Presbytery, Inc.*, 670 S.W.2d 777, 779-80 (Tex. App.—Fort Worth 1984, no writ)).

Next, you inform us that the submitted information was previously ruled upon by this office. In Open Records Letter No. 2005-07411 (2005), we determined that the transit authority could withhold the information under section 552.103 of the Government Code. As you state that the law, facts, and circumstances surrounding this prior ruling have not changed, the transit authority may rely on Open Records Letter No. 2005-07411 as a previous determination and therefore may continue to withhold the submitted information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). As our ruling is dispositive, we need not address your remaining argument.

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).

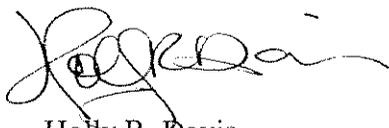
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in black ink, appearing to read "Holly R. Davis", written in a cursive style.

Holly R. Davis  
Assistant Attorney General  
Open Records Division

JV/HRD/krl

Ref: ID# 268565

Enc. Submitted documents

c: Mr. Alfred E. Ehm  
San Antonio Public Transit Users Association, Inc.  
170 Carousel Drive  
San Antonio, Texas 78227-4712  
(w/o enclosures)