



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 9, 2007

Mr. Tom Rugg
First Assistant District Attorney
Civil Division
Jefferson County
1001 Pearl Street, 3rd Floor
Beaumont, Texas 77701-3545

OR2007-13142

Dear Mr. Rugg:

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# 290036.

Jefferson County (the "county") received a request for a copy of a contract between SMG/Ford Park ("SMG") and Cumulus Broadcasting, L.L.C., notes and memoranda of a named individual pertaining to the contract, and a list of revenues and expenses pertaining to an event which took place at a county-owned entertainment facility. You argue that the contract and the list of revenue and expenses are not public information. In the alternative, you claim that the contract and the list of revenue and expenses are excepted from disclosure under section 552.104 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 (interested party may submit comments stating why information should or should not be released).

Initially, we note that you have not submitted any arguments or documents responsive to the portion of the request for notes and memoranda pertaining to the contract. We assume that, to the extent any responsive notes or memoranda existed when the county received the request for information, you have released them to the requestor. If not, then you must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

You contend that the contract and the list of revenues and expenses are not public information subject to the Act. The Act applies only to “public information.” *See* Gov’t Code § 552.021. 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:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002(a). Information is generally subject to chapter 552 when it is held by a governmental body and 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. Open Records Decision No. 635 (1995). You state that the contract at issue was not executed, received or filed by the county and is not considered to be a public document. You state that the county does not maintain copies of the contract. You also represent to this office that the county does not maintain a list of revenues and expenses responsive to the request. You assert that the county does not have a right of access to the contract or the revenue and expense figures under the legal arrangement between SMG and the county. In order to determine whether the county has a right of access, we sent a letter to the county requesting a copy of the instrument forming the relationship between SMG and the county. *See* Gov’t Code § 552.303(c) (providing that attorney general may give written notice to governmental body that additional information is necessary to render a decision). Upon review of this document, the arrangement between SMG and the county does not grant to the county a right of access to the contract or the revenue and expense figures at issue. Therefore, based on your representations and our review of the submitted documents, we agree that the contract and the revenue and expense figures at issue are not “public information” under the Act because the county does not maintain or have a right of access to this information. *See* Gov’t Code § 552.002(a)(2).¹

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

¹As we are able to make this determination, we need not address your remaining argument.

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,



M. Alan Akin
Assistant Attorney General
Open Records Division

MAA/mcf

Mr. Tom Rugg- Page 4

Ref: ID# 290036

Enc. Submitted documents

c: Mr. Jerry Jordan
News Editor
The Examiner Newspaper
795 Willow
Beaumont, Texas 77701
(w/o enclosures)