



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2007

Ms. Nancy O. Williams
Senior Assistant City Attorney
City of Irving
825 West Irving Boulevard
Irving, Texas 75060

OR2007-15609

Dear Ms. Williams:

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# 296252.

The City of Irving (the "city") received a request for the 2005-2007 RAB records and any and all code inspections and enforcement documents pertaining to a specified property. You claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have only submitted the information contained in the RAB reports for our review. Therefore, to the extent that any other responsive documents existed when the city received the request, we presume that you have released such information to the requestor. If you have not released such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply, then it must release information as soon as possible).

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 111.006 of the Tax Code provides as follows:

- (a) The following matter is confidential and may not be used publicly, opened to public inspection, or disclosed except as permitted under Subsection (b) of this section:

(1) a federal tax return or federal tax return information required to have been submitted to the comptroller with a state tax return or report; and

(2) all information secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer.

Tax Code § 111.006(a)(1), (a)(2). Section 111.006 applies to the comptroller's office and makes confidential information submitted to the comptroller or information that the comptroller obtained during the course of an examination conducted under chapter 111. *Cf.* Open Records Decision No. 520 (1989) (section 151.027 of the Tax Code, which has language similar to section 111.006, applies only to records and information in the comptroller's custody and not to information in another governmental body's possession). Thus, this section is not applicable and the city must release this information.

However, we note that the submitted information contains an e-mail address.¹ Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work email address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail address does not appear to be of a type specifically excluded by section 552.137(c). Therefore, unless the individual whose e-mail address is at issue consented to release of his e-mail address, the city must withhold the e-mail address that we have marked under section 552.137 of the Government Code.

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

¹The Office of the Attorney General will raise a mandatory exception like section 552.137 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 "Henisha D. Anderson". The signature is fluid and cursive, with a large initial "H" and "A".

Henisha D. Anderson
Assistant Attorney General
Open Records Division

HDA/jb

Ref: ID# 296252

Enc: Submitted documents

c: Mr. Won Woo
1335 North Belt Line
Irving, Texas 75061
(w/o enclosures)