



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2008

Ms. Yvette Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2008-04892

Dear Ms. Aguilar:

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# 307200.

The City of Corpus Christi (the "city") received a request for six categories of information concerning a real estate development, including records relating to rezoning, economic and traffic impact, and other matters.¹ You state that some of the requested information has been released. You inform us that other responsive information is the subject of a previous open records letter ruling. You claim that some of the remaining requested information is excepted from disclosure under section 552.137 of the Government Code. We have considered your arguments and have reviewed the information you submitted.²

Initially, we address your assertion that parts of this request for information seek access to information that did not exist on the date of the city's receipt of the request. We agree that

¹You inform us that the requestor subsequently narrowed part two of the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

the Act does not require the city to release information that did not exist when it received this request, create responsive information, or comply with a standing request to provide information on a periodic basis. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.— San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 534 at 2-3 (1989), 518 at 3 (1989), 476 at 1 (1987), 452 at 3 (1986), 362 at 2 (1983).

You also state that some of the responsive information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2008-04607 (2008). You inform us that there has been no change in the law, facts, and circumstances on which the previous decision is based. We therefore conclude that the city must dispose of the responsive information that is the subject of Open Records Letter No. 2008-04607 in accordance with that decision. See Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

Lastly, we address your claim under section 552.137 of the Government Code. Section 552.137 states that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. See *id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. You have marked personal e-mail addresses that the city seeks to withhold under section 552.137. You state that the owners of the marked e-mail addresses have not affirmatively consented to their public disclosure. We note that the e-mail addresses in question do not appear to fall within the scope of section 552.137(c). We therefore agree that the city must withhold the marked e-mail addresses under section 552.137.

In summary: (1) the city must dispose of the information that is the subject of Open Records Letter No. 2008-04607 in accordance with that decision; and (2) the city must withhold the marked e-mail addresses under section 552.137 of the Government Code. The rest of the submitted information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

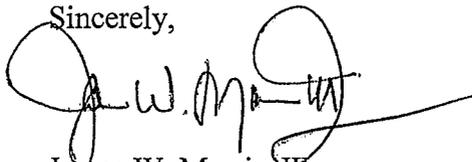
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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 'J.W. Morris, III', with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ma

Ref: ID# 307200

Enc: Submitted documents

c: Mr. Timothy P. Dowling
P.O. Box 2888
Corpus Christi, Texas 78403-2888
(w/o enclosures)