



ATTORNEY GENERAL OF TEXAS
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May 16, 2008

Ms. Celeste Baker
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Office of General Counsel
Texas Commission on Environmental Quality
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Mr. Robert Martinez
Director
Environmental Law Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

OR2008-06742

Dear Ms. Baker and Mr. Martinez:

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# 308993.

The Texas Commission on Environmental Quality (the "commission") received two requests from Senator Eliot Shapleigh for information pertaining to a specified air quality permit renewal. The commission's Office of the General Counsel (the "OGC") and its Environmental Law Division (the "division") have submitted separate briefs as well as separate documents that each seeks to withhold. The OGC and the division state that they will provide some of the requested information to the requestor. The OGC claims that the information it has submitted is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code.¹ The division claims that the information

¹Although the OGC raises section 552.101 of the Government Code in conjunction with Rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rules of Civil Procedure, this office has concluded that section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Thus, we will not address OGC's claim that the submitted information is confidential under section 552.101 in conjunction with either of these rules.

it has submitted is excepted from disclosure under sections 552.103, 552.107, and 552.111. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from an attorney representing the requestor. See Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

We note that the requestor in this instance, Senator Eliot Shapleigh, is a member of the State Legislature. Section 552.008 of the Government Code grants access to information, including confidential information, requested by individual members, agencies, or committees of the Texas Legislature, and provides as follows:

(a) This chapter does not grant authority to withhold information from individual members, agencies, or committees of the legislature to use for legislative purposes.

(b) A governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including confidential information, to the requesting member, agency, or committee for inspection or duplication in accordance with this chapter if the requesting member, agency or committee states that the public information is requested under this chapter for legislative purposes. A governmental body, by providing public information under this section that is confidential or otherwise excepted from required disclosure under law, does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information in the future. The governmental body may require the requesting individual member of the legislature, the requesting legislative agency or committee, or the members or employees of the requesting entity who will view or handle information that is received under this section and that is confidential under law to sign a confidentiality agreement that covers the information and requires that:

(1) the information not be disclosed outside the requesting entity, or within the requesting entity for purposes other than the purpose for which it was received;

(2) the information be labeled as confidential;

(3) the information be kept securely; or

(4) the number of copies made of the information or the notes taken from the information that implicate the confidential nature of the information be controlled, with all copies or notes that are not destroyed or returned to the governmental body remaining confidential and subject to the confidentiality agreement.

(c) This section does not affect:

- (1) the right of an individual member, agency, or committee of the legislature to obtain information from a governmental body under other law, including under the rules of either house of the legislature;
- (2) the procedures under which the information is obtained under other law; or
- (3) the use that may be made of the information obtained under other law.

Gov't Code § 552.008. In this instance, Senator Shapleigh has informed both the commission and this office that he requested the information at issue for legislative purposes. Although the commission argues that the release of the submitted information to Senator Shapleigh would raise separation of powers issues and "disturb the effective separation of powers because the legislative function would be in the position to interfere with the judicial and executive functions," the commission has failed to sufficiently demonstrate that such interference is present in the instant case. The OGC also asserts that section 552.008(c) allows a governmental body to withhold information from a legislator if it is confidential under "other law" outside of the Act. We disagree. Although section 552.008(c) recognizes that a legislator may have access to information under "other law," it does not limit a legislator's access to confidential information under section 552.008(b). Thus, we conclude that the commission must provide the submitted information to Senator Shapleigh in accordance with section 552.008 of the Government Code. *See* Gov't Code § 552.008(b). We note that the release of the submitted information under section 552.008 does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the commission's right to assert exceptions to required public disclosure of this information in the future. *See id*; *see also* Gov't Code § 552.352. Because we make our determination under section 552.008, we need not address the commission's arguments.²

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

²We note that section 552.008 is not without limits. Because Senator Shapleigh informs us, and provides evidence showing, that he has withdrawn as a party to the underlying contested case, we do not address whether a legislator who is a party to litigation involving a governmental body from whom information is requested is entitled to unlimited access under section 552.008.

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).

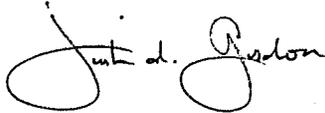
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/jh

Ref: ID# 308993

Enc. Submitted documents

c: Senator Eliot Shapleigh
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