



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2008

Mr. Terry Jacobson
Attorney at Law
Jacobson, Beard & Edmondson, P.C.
733 West Second Avenue
Corsicana, Texas 75110

OR2008-09503

Dear Mr. Jacobson:

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# 315534.

The City of Corsicana (the "city"), which you represent, received a request for the certified agenda of the March 18, 2008 open session city council meeting and the transcript or tape of the executive session meeting held during that open meeting. You state you have provided the requested certified agenda of the open meeting to the requestor. We understand you to claim that the requested tape recording of the executive session meeting is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential, such as section 551.104 of the Open Meetings Act, chapter 551 of the Government Code. Section 551.104 provides in part that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." *Id.* § 551.104(c). Thus, such information cannot be released to a member of the public in response to an open records request. *See* Attorney General Opinion JM-995 at 5-6

(1988) (public disclosure of certified agenda of closed meeting may be accomplished only under procedures provided in Open Meetings Act). Section 551.146 of the Open Meetings Act makes it a criminal offense to disclose a certified agenda or tape recording of a lawfully closed meeting to a member of the public. *See* Gov't Code § 551.146(a)-(b); *see also* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether governmental body may withhold such information under statutory predecessor to Gov't Code § 552.101). You inform us that the responsive tape recording, which you have not submitted for our review, was made during a closed session proceeding of the city council. Based on your representation, we agree that the city must withhold the executive session tape recording under section 552.101 of the Government Code in conjunction with section 551.104 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 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). If the governmental body does not file suit over 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 315534

c: Mr. Ricky Lightfoot, Jr.
Popovici & Associates, Inc.
747 N. Britain Road
Irving, Texas 75061
(w/o enclosures)