



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2008

Mr. O. Charles Buenger
City Attorney
Buenger & Associates
3203 Robinson Drive
Waco, Texas 76706

OR2008-11850

Dear Mr. Buenger:

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# 320365.

The City of Hewitt (the "city"), which you represent, received two separate requests from the same requestor for information regarding city council meetings. Specifically, the requestor seeks copies of (1) the official agenda and notice for any council, committee, or subcommittee meetings conducted on a specified date, (2) audio or digital recordings of any meetings held on that date, (3) documents or reports presented by city staff to the council at any meeting on that date, and (4) policies, procedures, rules, orders, or guidelines for the city regarding the posting of notices of public meetings. In a separate request, the requestor seeks copies of (1) the official agenda for the most recent regular city council meeting, (2) audio recordings of the most recently conducted regular meeting, and (3) recordings of all audio in the council room for the period of one hour before and one hour after the most recent regular meeting. You inform us the city has no information responsive to part 4 of the first request in a form other than the state law pertaining to open meetings.¹ You state the city has provided the requestor with information responsive to parts 1 and 3 of the first request, and parts 1 and 2 of the second request. You argue the remaining responsive information is not subject to disclosure under the Act. We have considered your argument 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).

¹The Act does not require a governmental body to answer factual questions, conduct legal research, or create responsive information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990).

Initially, we note the requestor excludes from his requests any executive or closed sessions of the city council. Thus, any portions of the submitted audio recordings that disclose a closed or executive session of the city council are not responsive to the present request. Our ruling does not address any non-responsive information, and the city need not release it in response to the request.

You assert the submitted audio recordings are not public information subject to the Act. The Act is applicable to "public information." See Gov't Code § 552.021. Public information is defined as:

[I]nformation 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 the Act 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. See Open Records Decision No. 635 (1995). Thus, virtually all information in a governmental body's physical possession is public information that is subject to the Act. *Id.* § 552.002(a)(1); see also Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). You argue the submitted audio recordings responsive to part 2 of the first request are not public information under the Act because they are not made or kept for the purpose of carrying out the city's business. You also argue the submitted recording responsive to parts 2 and 3 of the second request is not public information under the Act because it is not kept and maintained as an aid to the city secretary or staff in preparing the minutes of the meeting and the recording contains communications between individuals who were not aware of or did not consent to being recorded. However, you inform us the recordings are made for the security of the city's council room and courtroom. Upon review, we find the submitted audio recordings are made and maintained by the city and they pertain to the official business of the city. Therefore, we conclude these recordings are public information subject to required public disclosure under the Act. As you raise no exceptions to disclosure, the submitted audio recordings must be released to the requestor.

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,



Katherine M. Kroll
Assistant Attorney General
Open Records Division

KMK/eeg

Ref: ID# 320365

Enc. Submitted documents

c: Mr. Richard W. Carter
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(w/o enclosures)