



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2008

Ms. Judith Rawls
Assistant City Attorney
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2008-15562

Dear Ms. Rawls:

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# 327709.

The City of Beaumont (the "city") received two requests from different requestors for several categories of information pertaining to helicopters used by the city. You state that you have released most responsive information to the requestors. You claim that the submitted pilot log is not subject to the Act. Alternatively, you claim that this information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

You contend the submitted pilot log does not constitute public information under section 552.002 of the Government Code. Section 552.021 of the Government Code provides for public access to "public information." See Gov't Code § 552.021. Section 552.002(a) defines "public information" 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). In this instance, the pilot informs this office that the submitted flight log is a personal record that "reflects both police and non-police flight hours. I am not required by [any governmental entity] to log every flight or to even have a log book. The [Federal Aviation Administration] only requires documentation of those flights to achieve certification, ratings, and currency." Accordingly, you assert that this log is not collected,

assembled, or maintained by or on behalf of the city in connection with official city business. However, you acknowledge that there are entries within the log that list helicopter flights made by the pilot for official city business. In Open Records Decision No. 635 this office addressed a similar situation, in which an individual possesses seemingly personal information that contains references to official business of a governmental body. In this decision, the issue presented was whether the Railroad Commissioner's and a commission employee's calendars were public records subject to the Act. See Open Records Decision No. 635 (1995). This office concluded the commissioner's calendar was subject to the Act because of the presence of commission related entries in the calendar and state resources were used to maintain the calendar. *Id.* at 7. We also concluded that although the commission employee's calendar also contained commission related entries, it was not subject to the Act because the employee purchased the calendar and maintained it herself. *Id.*

In this instance, while you acknowledge that certain, individual entries within the submitted pilot log pertain to official city business, you indicate that no city resources were used to create or maintain the log. Based on our review and the submitted representations, we find that the pilot log at issue is maintained solely by the pilot and is not used by the city in connection with official city business. Consequently, we find that the submitted pilot log is not public information, and the city is not required to disclose it under the Act.¹

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

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

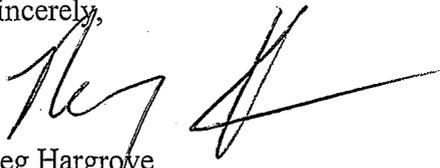
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 327709

Enc. Submitted documents

c: Mr. Bobby Hasting Anderson, Jr.
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