



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 8, 2009

Ms. Candice M. De La Garza  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2009-04685

Dear Ms. De La Garza:

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# 339436.

The Houston Police Department (the "department") received a request for any information regarding the sexually oriented business permit process for a specified address during a specified time period. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the department has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. *See* Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to withhold information, we will address these exceptions.

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. You state that portions of the submitted information are subject to the decision in *N.W. Enterprises, Inc. v. City of Houston*, 352 F.3d 162 (5th Cir. 2003). The question in *N.W. Enterprises* was the constitutionality of an ordinance of the City of Houston that regulated sexually-oriented businesses and specified the personal information required of individuals applying for permits to work as managers or entertainers in such businesses. With regard to the required public disclosure under the Act of certain information provided by entertainers and managers in their permit applications, the district court in *N.W. Enterprises* concluded that:

there is meaningful potential danger to individuals working in sexually oriented businesses if the information in their permit applications is disclosed to the public. The Court concludes further that the potential for disclosure is likely to have a chilling effect on the applicants’ protected speech. These dangerous and chilling effects are sufficiently severe that the information should be held confidential by the city.

*N.W. Enter., Inc. v. City of Houston*, 27 F.Supp.2d 754, 843 (S.D. Tex.1998). In upholding the confidentiality determination of the district court, the United States Court of Appeals for the Fifth Circuit stated that “[b]ecause the district court declared the information on entertainer and manager permit applications confidential under the [Act], the City cannot disclose it to the public.” *N.W. Enter.*, 352 F.3d at 195. The appellate court also agreed that the entertainers’ and managers’ home addresses and telephone numbers were confidential. *Id.* Thus, pursuant to *N.W. Enterprises*, information revealing the identity of an entertainer or manager of a sexually-oriented business, including the entertainer’s or manager’s home address and telephone number, is generally confidential. You inform us that under city code the definition of the term “operator” includes “manager.” See HOUSTON, TEX., CODE OF ORDINANCES Ch. 28, art. III, § 28-121 (1997). Portions of the submitted information reveal the type of information protected in *N.W. Enterprises*. Therefore, this identifying information, which we have marked, must be withheld under section 552.101 in conjunction with the court’s holding in *N.W. Enterprises*.<sup>1</sup> However, *N.W. Enterprises* did not address the confidentiality of the remaining information, including information that identifies business owners and business addresses. Therefore, that type of information is not confidential under the decision in *N.W. Enterprises* and may not be withheld on that basis under section 552.101.

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<sup>1</sup>As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

Finally, we note that some of the remaining information is excepted under section 552.136 of the Government Code.<sup>2</sup> Section 552.136(b) provides that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. The department must withhold the account numbers and routing numbers we have marked under section 552.136 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the court’s holding in *N.W. Enterprises*. The department must also withhold the information we have marked under section 552.136 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Greg Henderson  
Assistant Attorney General  
Open Records Division

GH/jb

Ref: ID#339436

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).