



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2010

Ms. Dorothy Palumbo
City Attorney
City of Highland Village
1000 Highland Village Road
Highland Village, Texas 75077

OR2010-08741

Dear Ms. Palumbo:

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# 382699.

The City of Highland Village (the "city") received a request for (1) the annual evaluations of three named individuals and (2) the dates of two specified evaluations. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note it does not appear you have submitted information relating to the two dates specified in the request. To the extent information responsive to this portion of the request existed on the date the city received this request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the submitted information consists of completed evaluations made by or for the city. Section 552.022(a)(1) of the Government Code provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108." Gov't Code § 552.022(a)(1). Pursuant to section 552.022(a)(1), a completed evaluation is expressly public unless it is

either excepted under section 552.108 of the Government Code or is expressly confidential under other law. Although you raise section 552.103 of the Government Code, section 552.103 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022. Therefore, the city may not withhold the submitted information under section 552.103 of the Government Code. As no further exception to disclosure has been raised, the submitted 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, 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, toll free, at (888) 672-6787.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/sdk

Ref: ID# 382699

Enc. Submitted documents

c: Requestor
(w/o enclosures)