



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 20, 2010

Mr. Bobby Gervais  
Olson & Olson, L.L.P.  
For City of Friendswood  
2727 Allen Parkway, Suite 600  
Houston, Texas 77019

OR2010-15914

Dear Mr. Gervais:

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# 397436.

The City of Friendswood (the "city"), which you represent, received a request for "all certified agendas and/or recordings of 'executive sessions' from September 2008 to [the] present." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your claim. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that the purpose of the Act is to prescribe conditions under which members of the general public can obtain information from a governmental body. *See* Attorney General Opinion JM-119 (1983) (statutory predecessor). An official of a governmental body who, in an official capacity, requests information held by the governmental body does not act as a member of the public in doing so. Thus, exceptions to public disclosure under the Act do not control the right of access of an official of a governmental body to information maintained by the governmental body. *See id.* at 3 (member of community college district board of trustees, acting in official capacity, has an inherent right of access to information maintained by district). Here, the requestor is a member of the city council. Consequently, whether the requestor in this instance has a right of access to the requested information depends on whether she is seeking the information in her official capacity. This office cannot resolve factual issues in the decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body that is

requesting our decision or on those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4.

It is unclear from our review whether the requestor is requesting the information in her personal capacity as a member of the public or in her official capacity as a member of the city council. Accordingly, we rule conditionally on this matter. Therefore, in the event the requestor is acting in her official capacity, we find the present request is not a request by a member of the public under the Act and we determine that the city may not withhold the requested information from the requestor pursuant to the Act's exceptions to required public disclosure. *See* Attorney General Opinion JM-119; *see also id.* JC-120 at 5 (1999) (governmental body may adopt procedure for review of certified agenda or tape recording of closed meeting, but may not absolutely prohibit review by member, even if member did not attend meeting). In the event, however, the requestor is making the present request in her personal capacity as a member of the public, we will address your claimed exception.

We next address the requestor's assertion that the executive sessions held by the city council were in violation of the city charter and, therefore, violate the Open Meetings Act ("OMA"). Thus, the requestor and the city ask this office to determine whether the city violated OMA. Making such a ruling would require investigation and resolving questions beyond the scope of this division's authority in issuing open records decisions. *See* Gov't Code § 552.301(a) (division's authority is limited to determining whether requested information falls within an exception to disclosure). Accordingly, this ruling does not address this issue raised by the requestor.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information other statutes make confidential. You raise section 552.101 in conjunction with section 551.104 of OMA for the certified agenda and tape recording of a closed meeting. Section 551.104 provides, in part, "[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.<sup>1</sup> *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 OMA). Section 551.146 of OMA 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). Thus, if the requestor is making the present request in her personal

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<sup>1</sup>We note that the city is not required to submit a certified agenda or tape recording of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101 of the Government Code.

capacity as a member of the public, the city must withhold the certified agendas and tape recordings of the closed meetings from the public pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.<sup>2</sup>

In summary, in the event the requestor is acting in her official capacity, we find the present request is not a request by a member of the public under the Act and we determine that the city may not withhold the requested information from the requestor pursuant to the Act's exceptions to required public disclosure. If, however, the requestor is making the present request in her personal capacity as a member of the public, the city must withhold the certified agendas and tape recordings of the closed meetings from her pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

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, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 397436

No enclosure

c: Requestor

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<sup>2</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including certified agendas and tapes of closed meetings under section 552.101 in conjunction with section 551.104 of the Government Code, without the necessity of requesting an attorney general decision.