



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2011

Mr. Warren M. S. Ernst
Chief of the General Counsel Division
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2011-05508

Dear Mr. Ernst:

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# 415097.

The City of Dallas (the "city") received a request for invoices paid in relation to the bonds sold for improvement of the Trinity River Corridor and communications between named individuals during specified periods of time. You state you will release some of the requested information to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This office has repeatedly held that the transfer of confidential information between governmental agencies does not destroy the confidentiality of that information. Attorney General Opinions H-917 (1976), H-836 (1974), Open Records Decision Nos. 561

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

(1990), 414 (1984), 388 (1983), 272 (1981), 183 (1978). These opinions recognize the need to maintain an unrestricted flow of information between state agencies. In Open Records Decision No. 561, we considered whether the same rule applied regarding information deemed confidential by a federal agency. In that decision, we noted the general rule that section 552 of title 5 of the United States Code, the federal Freedom of Information Act ("FOIA"), applies only to federal agencies and does not apply to records held by state agencies. ORD 561 at 6. Further, we stated that information is not confidential when in the hands of a Texas agency simply because the same information is confidential in the hands of a federal agency. *Id.* However, in the interests of comity between state and federal authorities and to ensure the flow of information from federal agencies to Texas governmental bodies, we concluded that: "when information in the possession of a federal agency is 'deemed confidential' by federal law, such confidentiality is not destroyed by the sharing of the information with a governmental body in Texas. In such an instance, [section 552.101] requires a local government to respect the confidentiality imposed on the information by federal law." *Id.* at 7.

You assert that the United States Army Corps of Engineers (the "Corps") considers the information you have marked and highlighted to be confidential under the deliberative process privilege found in section 552(b)(5) of title 5 of the United States Code and under the personal privacy provisions found in sections 552(b)(6) and 552(b)(7)(c) of title 5 of the United States Code. *See* 5 U.S.C. § 552(b)(5), (6), (7)(c). Upon review, we find that some of the information at issue was provided to the city by the Corps. Therefore, based on the city's representations and our review, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with federal law. *Cf.* Open Records Decision No. 564 at 2 (1990) (this office will accept a governmental body's good-faith determination with respect to questions of fact, which cannot be resolved in the formal decision process).

However, the remaining e-mails you seek to withhold on this basis appear on their face to be records of the city, not the Corps. As discussed above, information is not confidential under the Act simply because the same information would be protected from disclosure in the hands of a federal agency. *See* ORD 561 at 6. We therefore conclude these remaining documents are not confidential records of a federal agency transferred to the city, but rather are records of the city. Thus, the city may not withhold the remaining information based on federal law. As no other exceptions to disclosure have been raised, 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, 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tf

Ref: ID# 415097

Enc. Submitted documents

c: Requestor
(w/o enclosures)