



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 28, 2011

Mr. Richard L. Bilbie  
Assistant City Attorney  
City of Harlingen  
P.O. Box 2207  
Harlingen, Texas 78551

OR2011-17416

Dear Mr. Bilbie:

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# 437259.

The City of Harlingen (the "city") received two requests for a specified ethics complaint. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains an agenda of a city public meeting. The agendas of a governmental body's public meetings are specifically made public under provisions of the Open Meetings Act, chapter 551 of the Government Code. *See Gov't Code* §§ 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying on request to governmental body's chief administrative officer or officer's designee), .041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). As a general rule, the exceptions to disclosure found in the Act, such as sections 552.103 and 552.108 of the Government Code, do not apply to information other statutes make public. *See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989)*. Furthermore, although you raise common-law privacy for the agenda, a specific statutory right of access also prevails over the common law. *See Collins v.*

*Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.— Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Therefore, the city must release the submitted public meeting agenda, which we have marked, pursuant to section 551.022 of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the city attorney, or a special prosecutor hired by the city attorney, investigates alleged violations of the city’s ethics ordinance, a copy of which you have submitted for our review. You state, and the ethics ordinance reflects, the city attorney commences an investigation when a sworn ethics complaint is filed against a city official, and the city attorney may use the services of the city’s police department to assist with the investigation. Furthermore, the investigations may result in criminal charges being filed in the city’s municipal court. You inform us the remaining information pertains to a pending ethics investigation and that release of this information would interfere with this investigation. Based on your representations and our review, we conclude release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

In summary, the city must release the submitted public meeting agenda, which we have marked, pursuant to section 551.022 of the Government Code. The city may withhold the remaining information under section 552.108(a)(1) 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

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

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,

A handwritten signature in black ink, appearing to read 'Ana Carolina Vieira', with a long horizontal flourish extending to the right.

Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/agn

Ref: ID# 437259

Enc. Submitted documents

c: Requestors (2)  
(w/o enclosures)