



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 23, 2012

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

OR2012-13414

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# 462791.

The City of Dallas (the "city") received a request for e-mail communications between a named city official and any city judge during a specified time period. You inform us some of the requested information either has been or will be released. You state the rest of the requested information was the subject of a previous open records letter ruling. We have considered your arguments and reviewed the information you submitted.

You state the submitted information was the subject of Open Records Letter No. 2012-12792 (2012), which involved a request for judicial evaluations submitted by city prosecutors as part of the judge selection process. Having reviewed the information that was the subject of Open Records Letter No. 2012-12792, we note the previous ruling did not encompass any information that would be responsive to the present request. We therefore conclude the city may not withhold any information encompassed by the present request on the basis of Open Records Letter No. 2012-12792. *See* Open Records Decision No. 673 at 6 7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

We note some information responsive to the present request was the subject of another request by the city for a ruling, in response to which this office issued Open Records Letter No. 2012-13177 (2012). In that ruling, we concluded the information at issue may be

withheld under section 552.108 of the Government Code. We are not aware of any change in the law, facts, or circumstances on which that ruling is based. We therefore conclude the city may withhold the information responsive to the present request that is the subject of Open Records Letter No. 2012-13177 on the basis of that ruling. *See* ORD 673 at 6-7.

We next note the submitted information consists of records of evaluations of the city's municipal judges. Thus, the submitted information is not responsive to the present request for e-mail communications between the named city official and any city judge. Therefore, this decision does not address the public availability of the submitted information, which the city need not release in response to the request.

Lastly, we address the city's obligations under section 552.301 of the Government Code, which prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from required public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(e) requires a governmental body to submit to this office, not later than the fifteenth business day after the date of its receipt of the request for information, the specific information the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(D). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

You state the city received the present request for information on June 4, 2012; therefore, the city's fifteen-business-day deadline under section 552.301(e) was June 25. As of the date of this decision, you have not submitted any information responsive to the request that the city seeks to withhold from public disclosure. Therefore, to the extent the city maintained any information responsive to the present request on the date of the city's receipt of the request, other than the responsive information encompassed by Open Records Letter No. 2012-13177, the city must release any such information pursuant to section 552.302 of the Government Code.<sup>1</sup> *See* Gov't Code § 552.221; Open Records Decision No. 664 (2000).

In summary, the city (1) may withhold the information responsive to the present request that is the subject of Open Records Letter No. 2012-13177 on the basis of that ruling and (2) must release any other information responsive to the present request that the city maintained on the date of its receipt of the request.

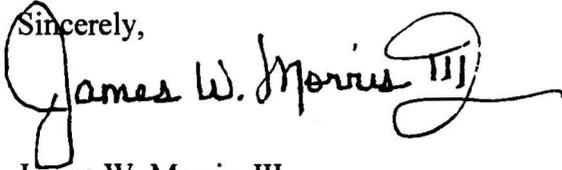
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<sup>1</sup>We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, stylized initial "J" and a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/bhf

Ref: ID# 462791

Enc: Submitted documents

c: Requestor  
(w/o enclosures)