



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 27, 1994

Honorable H. J. Dutton
Mayor
City of Mont Belvieu
P.O. Box 1048
Mont Belvieu, Texas 77580

OR94-274

Dear Mayor Dutton:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 24637.

The City of Mont Belvieu has received two requests for information relating to a zoning survey performed on behalf of the city by the University of North Texas ("UNT"). On January 27, 1994, the requestor asked for the original working papers and/or partial drafts completed by UNT and for the telephone numbers of the people surveyed. You suggest that no such material existed at that time. On February 4, 1994, the city received a request for the draft results of the survey. On February 18, 1994, the requestor renewed his January 27, 1994 request. The city has made a copy of the final zoning survey available to the requestor, but asserts that the requested information is excepted from required public disclosure under sections 552.101 and 552.106 of the act.

First, the city contends that the working papers containing the survey respondents' telephone numbers are confidential under section 552.101 in conjunction with the doctrine of common-law privacy, stating "disclosure could cause the release of such embarrassing or objectionable facts as a person's educational status, income level, and marital status." We have reviewed the sample citizen survey submitted for our review. It does not contain any information which would reveal a respondent's educational status,

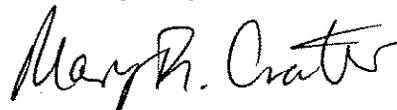
¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

income level, or marital status. Moreover, we do not believe that it reveals any information that is highly intimate or embarrassing. We further note that a governmental body's promise to keep information confidential is not a basis for excepting information from required public disclosure unless the governmental body has express statutory authority to make such a promise. *See* Attorney General Opinion JM-672 (1987) at 2; Open Records Decision Nos. 594 (1991) at 3; 514 (1988) at 1. We are not aware of any statute that authorizes the city to keep confidential the information it has obtained from UNT or that UNT has obtained from the survey respondents. Therefore, the working papers containing respondents' telephone numbers must be released.

Next, the city contends that the draft zoning survey is excepted from required public disclosure by section 552.106 of the act. Section 552.106 protects documents that reveal the deliberative processes of a governmental body relevant to the enactment of legislation, such as subjective judgments and recommendations. *See* Open Records Decision No. 429 (1985). It does not protect purely factual material. *See* Open Records Decision No. 460 (1987). We have reviewed the draft zoning survey. Because it contains nothing more than the preliminary, factual results of the survey, *i.e.*, the percentage of respondents who answered a question in a particular way, we conclude that it does not contain the kind of information protected by section 552.106 and must be released.

Because case law and prior published open records decisions resolve your request, we address it with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/KKO/rho

Ref.: ID# 24637

Enclosures: Submitted documents

cc: Mr. Carrell Richardson
P.O. Box 176
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(w/o enclosures)