OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

July 11, 2001

Ms. Nancy Firebaugh Arthur
P.O. Box 970
Robert Lee, Texas 76945

OR2001-2997

Dear Ms. Arthur:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151742.

The City of Robert Lee, Texas (the "city"), which you represent, received a request for eight categories of information regarding the financial records of the city and "copies of all contracts, agreements, understandings, documents, communications, charter, by-laws, reports, letters, etc. between City of Robert Lee, Texas, and the West Texas Rural Counties Medical Association Benefits Pool." You state that you have forwarded to this office representative samples of the requested information.[1] The samples you have submitted consist of the city's budgets containing a statement of cash receipts and disbursements. You claim that the requested information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code and several confidentiality statutes. We have considered your claims and reviewed the submitted information.

First, we note that you have submitted information responsive to item one only. You did not provide this office with the specific information requested or representative samples of the information responsive to the remaining seven categories of requested information as required by section 552.301(e)(1)(D) of the Government Code. Although you state that some of the requested information includes employee retirement system records, employee financial information, certain tax information, and certain health maintenance organization information, you have not submitted this information to this office either. Section 552.302 provides that if a governmental body fails to submit the materials required by

[1] We assume that 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 that those records contain substantially different types of information than that submitted to this office.

section 552.301, the requested information must be released unless there is a compelling reason to withhold the information.

Because you have not provided us with either the specific information requested or representative samples of the information responsive to each category of requested information, we have no choice but to order the information responsive to the remaining seven categories of requested items and the information you claim is confidential released pursuant to section 552.302. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information.

We next note that the submitted information is governed by section 552.022 of the Government Code. Section 552.022 provides, in pertinent part:

> (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:
>
> . . . .
>
> (3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted information is information in an account, voucher, or contract that relates to the receipt or expenditure of public or other funds by a governmental body. Thus, this information must be released under section 552.022, unless the information is expressly made confidential under other law. Sections 552.103, 552.107, and 552.111 of the Government Code are discretionary exceptions under the Public Information Act and do not constitute "other law" for purposes of section 552.022. *See, e.g.*, Open Records Decision Nos. 663 at 5 (1999) (governmental body may waive the litigation exception, section 552.103, and the work-product exception, section 552.111); 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1). Accordingly, you must release the submitted information pursuant to section 552.022(a)(3) of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

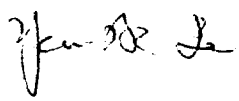
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DKB/seg

Ref: ID# 151742

Enc. Submitted documents

c: Mr. Peter A. Franklin, III
Locke, Liddell & Sapp, L.L.P.
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201-6776
(w/o enclosures)