



August 27, 2001

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2001-3773

Dear Ms. Sims:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151169.

The City of Lubbock (the "city") received a request for several categories of information regarding certain city-owned real property.¹ You inform us that you have released any information responsive to the request that is clearly public information, except for the highlighted portions of the information that you have submitted. You claim that the highlighted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address a procedural matter. Although the city raised claims under sections 552.101, 552.103, and 552.111 in one or both of its briefs dated June 22, 2001 and June 28, 2001, neither brief included comments stating the reasons why such exceptions apply to the submitted information, nor was any of the submitted information marked to show exceptions claimed under those sections. Thus, the city has failed to comply with section 552.301(e)(1)(A) of the Government Code, and we have no basis to conclude that the information is excepted from disclosure under sections 552.101, 552.103 or 552.111. Therefore, the city may not withhold the information under sections 552.101, 552.103, or 552.111. *See Gov't Code § 552.302.* We next address your claim under section 552.107.

¹The requestor seeks 1) any and all information and records regarding the purchase by the city of approximately 4,892 acres of land referred to as the "City Farms," 2) any and all information and records regarding the reasons for purchasing the City Farms, 3) any and all information and records regarding the action taken by the city's council regarding the purchase of the city farms, 4) any and all information and records regarding permits obtained from regulatory bodies pertaining to the City Farms, and 5) any and all information and records regarding the lease of the City Farms for any reason or purpose.

Section 552.107(1) excepts information “that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct[.]” In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney’s legal advice and the client’s confidences made to the attorney. *See* Open Records Decision No. 574 (1990). This office has concluded that section 552.107 excepts from public disclosure only “privileged information,” that is, information that reflects either confidential communications from the client to the attorney or the attorney’s legal advice or opinions; it does not apply to all client information held by a governmental body’s attorney. *See id.* at 5. Section 552.107(1) does not except purely factual information from disclosure. *Id.* After a review of your arguments and the submitted documents, we agree that most of the information you have highlighted in those documents constitutes legal opinion, advice, or recommendation to which section 552.107(1) is applicable. Accordingly, the city may withhold the highlighted portions of the submitted documents under section 552.107(1) with the exception of the information we have marked. The remainder of the submitted information, including the highlighted portions that we have marked, must be released to the requestor.

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,

A handwritten signature in black ink that reads "J. Steven Bohl". The signature is written in a cursive style with a large initial "J" and "S".

J. Steven Bohl