



March 15, 2002

Ms. Sharon E. Hicks
City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604

OR2002-1274

Dear Ms. Hicks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160102.

The City of Abilene (the "city") received a request for five categories of information relating to the Abilene Housing Authority of the City of Abilene ("AHA"). You state that the city has previously provided the requestor with the entirety of the information that was responsive to items 3 and 5 of the request and that the requestor has been notified of this fact pursuant to section 552.232 of the Government Code. *See* Gov't Code § 552.232 (governmental body shall certify to requestor that copies of all or part of requested information, as applicable, were previously furnished to requestor). Thus, we need not address those request items in this ruling. *See* Gov't Code § 552.301. You state that you do not have any documents responsive to item 4 of the request. The Public Information Act (the "Act") applies only to information in existence at the time it is requested.¹ Accordingly, this office has concluded that the Act does not require a governmental body to prepare new information in response to a request. *See, e.g.*, Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

You claim that the submitted information which is responsive to items 1 and 2 of the request is excepted from disclosure under sections 552.103 and 552.305 of the Government Code,² and may be excepted from disclosure under sections 552.101 and 552.110. We have

¹It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351.

²Please note that section 552.305 is not an exception to the disclosure of information under the Public Information Act. Rather, section 552.305 permits a governmental body to rely on an interested third party to raise and explain the applicability of exceptions in the Public Information Act in certain circumstances. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990).

considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

You make no arguments and take no position as to whether the submitted information is excepted from disclosure under sections 552.101 and 552.110. You state, and provide documentation showing, that you notified the third party whose proprietary interests may be implicated of the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). We note, however, that the third party, Mr. Cameron Alread, Architect, has not submitted any arguments to our office in response. We thus have no basis for concluding that any of the requested information implicates the privacy or proprietary interests of any third party. *See* Open Records Decision Nos. 552 at 5 (1990) (stating that if governmental body takes no position, attorney general will grant exception to disclosure under statutory predecessor to Gov't Code § 552.110(a) if third party makes *prima facie* case that information qualifies as trade secret under section 757 of Restatement of Torts, and no argument is presented that rebuts claim as matter of law), 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under Gov't Code § 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm). Therefore, we do not consider the applicability of sections 552.101 and 552.110.

We first note that the submitted documents include the minutes of meetings of the AHA Board of Directors. The minutes, tape recordings, and agendas of a governmental body's public meetings are specifically made public by statute, and therefore may not be withheld from the public pursuant to section 552.103 of the Government Code. *See* Gov't Code §§ 551.022 (minutes and tape recordings), 551.043 (notice); Attorney General Decision JM-1143 (1990) (tape recordings of meeting of governmental body produced as aid in preparing minutes are expressly subject to Open Records Act); Open Record Decision No. 221 (1979) (board minutes of school district cannot be excepted under section 3(a)(3) [statutory predecessor to section 552.103] under any imaginable circumstances). When a statute expressly makes information public and mandates the release of the information, that information cannot be withheld from disclosure under one of the exceptions in Subchapter C of chapter 552 of the Government Code. Open Records Decision No. 451 (1986) (specific statute that affirmatively requires release of information at issue prevails over litigation exception of Public Information Act), 378 (1983), 161 (1977), 146 (1976). Accordingly, the city must release the requested minutes of meetings of the AHA Board of Directors.

The submitted documents also include information that falls within the scope of section 552.022 of the Government Code. Section 552.022(a) enumerates categories of

information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law. A portion of the information that you submitted to us for review appears to be completed field reports, which fall into one of the categories of information made expressly public by section 552.022. *See* Gov't Code section 522.022(a)(1). Section 552.022(a)(1) states that a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it is excepted under section 552.108 of the Government Code or is expressly confidential under other law. You do not argue that section 552.108 is applicable to the information at issue. Section 552.103 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (stating that governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (litigation exception does not implicate third-party rights and may be waived by governmental body) We have marked the information that the city must release under section 552.022(a)(1).

Accordingly, all of the submitted information 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 160102

Enc. Submitted documents

c: Mr. James D. Norvell
Norvell & Associates
2911 Cathedral Way, Suite 1111
Dallas, Texas 75205
(w/o enclosures)

Mr. Cameron Alread
Architect
209 West 8th Street
Fort Worth, Texas 76102
(w/o enclosures)