



July 17, 2002

Mr. David M. Berman
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 North Akard, Suite 1800
Dallas, Texas 75201

OR2002-3922

Dear Mr. Berman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165097.

The Town of Cross Roads (the "town"), which you represent, received numerous requests from the same requestor for information relating to the activities of two named individuals on behalf of the town. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. In the alternative, you contend that the information in question may not be public information for purposes of the Public Information Act (the "Act"). We have considered your claims and reviewed the submitted representative sample of information.¹

We begin by addressing the applicability of the Act to the requested information. Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it."

As you acknowledge, information collected, assembled, or maintained by a third party may be public under the Act if the information is collected, assembled, or maintained for a governmental body. You inform us that the named individuals in question are private citizens who have volunteered to assist the Town Council in its consideration of matters

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.

related to a proposed development. The requested information consists of documents prepared and assembled by these individuals in the course of providing assistance with the official business of the Town Council. Although you assert that the town does not own the requested records, you inform us that the individuals "are acting as agents for the Town in serving on ad hoc committees and in providing assistance to the Town Council."

Pursuant to section 552.303(c) of the Government Code, on June 26, 2002 this office sent a notice to you via facsimile requesting that you provide further information regarding the relationship between the town and the two individuals. You were required to submit the necessary additional information to this office not later than the seventh calendar day after the date the notice was received. Gov't Code § 552.303(d). As of the date of this letter, we have not received your response. Consequently, we address your claims according to the arguments and information you have submitted to date. You inform us that the requested documents were prepared by the two individuals in their capacity as agents of the town. Furthermore, we find that the information submitted to date pertains to the transaction of official town business. Accordingly, we determine that the information in question is public information subject to the Act. See Gov't Code § 552.002.

Pursuant to section 552.303(e) of the Government Code, the information that is subject to a person's request to a governmental body and regarding which the governmental body fails to comply with section 552.303(d) is presumed to be subject to required public disclosure and must be released unless there exists a compelling reason to withhold the information. We find you have not demonstrated a compelling reason exists to withhold the information. Therefore, we conclude that the requested 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 165097

Enc: Submitted documents

c: Mr. Thomas Wilson
3912 White Tail Drive
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(w/o enclosures)