



October 28, 2002

Mr. Terrence S. Welch
Brown & Hofmeister, L.L.P.
1717 Main Street, Suite 4300
Dallas, Texas 75201

OR2002-6088

Dear Mr. Welch:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171364.

The City of McKinney (the "city"), which you represent, received a request for the individual performance appraisals of the requestor completed by each member of the board of the city's Convention and Visitors Bureau. You claim that the requested evaluations are not public information within the scope of the Public Information Act (the "Act"). Alternatively, you claim that the requested evaluations are excepted from disclosure under section 552.111 of the Government Code. We have considered your arguments and reviewed the submitted information.

We first consider whether the submitted information is subject to chapter 552 of the Government Code. Chapter 552 is only applicable to public information. *See* Gov't Code § 552.021. 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." You inform us that each board member prepared an individual evaluation in connection with the board's evaluation of the job performance of the requestor, the executive director of the Convention and Visitors Bureau. You also state that members of the board compiled the individual evaluations into a composite job performance evaluation. Although you contend that the individual evaluations at issue are "personal notes" and are not used in conducting the business of the Convention and Visitors Bureau, it is clear from your arguments and the submitted documents that the board created and assembled the individual evaluations in the course of evaluating the executive director's performance of her official

duties as an employee of a governmental body, the Convention and Visitors Bureau. Furthermore, in evaluating of the performance of the executive director, the board was performing an official function, and thereby engaged in the transaction of official business. We therefore determine that the individual evaluations in question are information "collected, assembled, or maintained" by the city's Convention and Visitors Bureau in connection with the transaction of official business. Accordingly, the evaluations are "public information" subject to disclosure under the Act. *See* Gov't Code §§ 552.002, 552.021.

Next, we note that the information at issue is subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

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:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

The submitted documents are completed evaluations. Therefore, as prescribed by section 552.022, the city must release such information unless it is excepted from disclosure under section 552.108 or confidential under other law. You contend that the information at issue is excepted from disclosure under section 552.111 of the Government Code. Section 552.111, however, is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See* Open Records Decision No. 473 (1987) (governmental body may waive section 552.111); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the city may not withhold the requested evaluations under section 552.111 of the Government Code. As you raise no other exceptions to disclosure, we determine the city must release the requested evaluations 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# 171364

Enc: Submitted documents

c: Ms. Judy Skowron
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(w/o enclosures)