OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 9, 2002

Mr. Charles A. Balcar
City Administrator
City of Cibolo
P.O. Box 88
Cibolo, Texas 78108

OR2002-6985

Dear Mr. Balcar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173840.

The City of Cibolo (the "city") received a request for a copy of a letter from the city's legal counsel to the city regarding a basketball goal located on city property. You claim that the requested information is excepted from disclosure under "the 'confidentiality exception' of the Open Records Law." Further, in a letter to the requestor, a copy of which you submitted to this office, you indicate that the requested information is not subject to the Public Information Act (the "Act"), and that such information is excepted from disclosure under the attorney client privilege. We have considered your arguments and reviewed the submitted information.

You initially claim that the requested information is not subject to the Act. We note that section 552.021 of the Government Code provides for public access to "public 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." Upon review of the information at issue, we conclude that it is maintained by the city in connection with the transaction of official city business, and therefore, it is subject to disclosure under the Act.

Next, we must address the city's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Further, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You have not provided this office with a signed statement or sufficient evidence showing the date on which the city received the present request for information. Nor have you provided this office with a copy of the present request. The requestor, however, has provided a copy of the request, which is dated September 3, 2002. Further, you have provided this office with a copy of the city's response to the September 3, 2002 request denying the requestor's request for information, and that response is dated September 5, 2002. However, the city did not request a decision from this office or submit the requested information for our review until October 2, 2002. Thus, the city has failed to comply with the requirements of both section 552.301(b) and section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You claim that the submitted information is excepted under the attorney-client privilege. We note that in Open Records Decision No. 574 (1990), this office determined that the statutory predecessor to section 552.107(1) was the appropriate section for a governmental body to cite when seeking to except from required public disclosure communications between the governmental body and its legal counsel. Section 552.107 of the Government Code is a discretionary exception under the Public Information Act and does not demonstrate a compelling reason to withhold information from the public. *See, e.g.*, Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Accordingly, the submitted information may not be withheld under section 552.107(1) of the Government Code.

You also claim that the submitted information is subject to the "confidentiality exception" of the Act. Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You have not directed our attention to any law, nor are we aware of any law, under which any of the information in question is considered to be confidential for

purposes of section 552.101. *See, e.g.,* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). Therefore, none of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Thus, 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,

Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 173840

Enc: Submitted documents

c: Mr. Martin Troncoso
139 Navajo Circle
Cibolo, Texas 78108
(w/o enclosures)