OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

June 11, 2003

Mr. J. David Dodd, III
Nichols, Jackson, Dillard, Hager & Smith
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2003-4031

Dear Mr. Dodd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182616.

The City of Sachse (the "city"), which you represent, received a request for seven categories of information relating to Kimball Hill Homes entities. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted sample of information.[1]

Initially, 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. The city received the present request for information on March 20, 2003. The city did not request a decision from this office until April 4, 2003. Consequently, the city failed to request a decision within the ten business-day period mandated by section 552.301(a) 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

[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.

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). As section 552.101 of the Government Code provides a compelling reason to overcome the presumption of openness, we will address your argument under that exception. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests).

Section 552.101 protects from required disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes. You state the requested information is excepted from public disclosure pursuant to Texas Attorney General Opinion No. H-661 (1975). That opinion construed the predecessor statutes to sections 111.006 and 151.027 of the Tax Code. *See* Op. Tex. Att'y Gen. No. H-661 (1975). Sections 111.006 and 151.027 apply to the comptroller's office and make confidential information submitted to the comptroller or information that the comptroller obtained during the course of an examination conducted under chapters 111 and 151. *Cf.* Open Records Decision No. 520 (1989) (section 151.027 of the Tax Code applies only to records and information in the custody of the comptroller; it has no application to such information in the possession of another governmental body); Attorney General Opinion No. H-661 (1975) (comptroller may not release information as to the amounts of tax paid by a particular taxpayer). Thus, neither section applies here.

You argue that the tax identification number in the submitted documents is confidential pursuant to Open Records Decision No. 599. Open Records Decision No. 599 addressed, pursuant to chapter 603 of title 20 of the Code of Federal Regulations, the confidentiality of tax identification numbers assigned by the Texas Employment Commission, predecessor to the Texas Workforce Commission (the "commission"), and maintained in commission files. Open Records Decision No. 599 at 6 (1992). The confidentiality provisions of chapter 603 of title 20 of the Code of Federal Regulations are applicable to information maintained by or obtained from state unemployment compensation agencies, such as the commission. *See* 20 C.F.R. § 603.5, .7. In this instance, the tax identification number in question was neither maintained by or obtained from the commission. Therefore, chapter 603 of title 20 of the Code of Federal Regulations is not applicable to the submitted information.

We note that the submitted documents contain information that is confidential under section 552.136 of the Government Code. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. The city must, therefore, withhold the marked account number under section 552.136.

We note that the submitted documents contain an e-mail address obtained from the public. Section 552.137 makes certain e-mail addresses confidential. Section 552.137 provides:

> (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
>
> (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code §552.137. You do not inform us that a member of the public has affirmatively consented to the release of the e-mail address contained in the submitted materials. The city must, therefore, withhold the e-mail address we have marked under section 552.137.

In summary, the city must withhold the account number we have marked under section 552.136. You must withhold the e-mail address we have marked under section 552.137. The remaining 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 Dep't of Pub. 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,

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 182616

Enc: Submitted documents

c: Mr. David W. Showalter
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(w/o enclosures)