



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 19, 2003

Ms. Florence R. Upton  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2003-5830

Dear Ms. Upton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186225.

The City of San Antonio (the "city") received a request for (1) an accounting of any developer escrows or cash securities which were posted to ensure completion of either a commercial or residential project, and (2) an accounting of checks that are outstanding for 120 days or more, and anything which has become "stale-dated." You state, and provide documentation showing, that you sought clarification of the scope of the first part of the request from the requestor. *See* Gov't Code § 552.222 (providing that a governmental body may ask the requestor to clarify the request if what information is requested is unclear to the governmental body); *see also* Open Records Decision No. 663 at 5 (1999) (discussing requests for clarification). You also state that the city will make available to the requestor some information responsive to the second part of the request. You claim, however, that the remaining information that is responsive to the second part of the request, a representative sample of which you have submitted for our review, is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

With regard to your request for clarification as to the first part of the request, we note that a governmental body must make a good-faith effort to relate a request to information that it

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<sup>1</sup>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.

holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). From the submitted information, it appears that the requestor has not responded to your request for clarification. Accordingly, the city need not respond to the first part of the present request until the city receives the requestor's response. Upon receiving a response from the requestor, however, the city must seek a ruling from this office before withholding any responsive information from the requestor. *See also* Open Records Decision No. 663 (1999) (providing for tolling of ten business day time limit to request attorney general decision while governmental body awaits clarification).

We next address your claim under section 552.101 of the Government Code with respect to the portion of the remaining requested information that you seek to withhold. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You indicate that a portion of the information responsive to the second part of the request is confidential under sections 74.104 and 76.104 of the Property Code.

Title 6 of the Property Code pertains to unclaimed property. Several provisions of Title 6 govern the conditions under which different types of property are presumed to be abandoned by the owner of the property. *See, e.g.*, Prop. Code §§ 72.101 (personal property), 73.101 (property held by financial institution), 75.101 (mineral proceeds, and owner's underlying right to receive mineral proceeds). Under chapter 74 of the Property Code, a holder of property presumed abandoned under chapter 72, 73, or 75 of the Property Code, or under chapter 154 of the Finance Code, must file a report of the property with the Comptroller of Public Accounts (the "comptroller").<sup>2</sup> *See* Prop. Code § 74.101. Under section 76.101 of the Property Code, a municipality holding property that is presumed abandoned and is subject to chapter 76 must file a report of the property with the treasurer of the municipality.<sup>3</sup> *See* Prop Code § 76.101.

The public availability of the property reports required under sections 74.101 and 76.101 is governed by sections 74.104 and 76.104 of the Property Code. Section 74.104 provides:

- (a) Except as provided by Section 74.201, 74.203, or 74.307, a property report filed with the comptroller under section 74.101 is confidential until the second anniversary of the date the report is filed.

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<sup>2</sup>Chapter 154 of the Finance Code governs contracts for prepaid funeral services. *See* Fin. Code § 154.301 (presumption of abandonment for money paid by a purchaser of a prepaid funeral benefits contract).

<sup>3</sup>Chapter 76 of the Property Code applies to property held by a school district, municipality, or county that is presumed abandoned under chapter 72 or chapter 75 and is valued at \$100 or less. Prop. Code § 76.001. Chapter 74 of the Property Code does not apply to property that is subject to chapter 76 of the Property Code. Prop. Code § 74.001.

- (b) The social security number of an owner that is provided to the comptroller is confidential.

Section 76.104 of the Property Code provides:

- (a) Except as provided by this chapter, a property report filed with the treasurer of the holder is confidential until the second anniversary of the date the report is filed.
- (b) Notwithstanding other law, the social security number of an owner that is reported to the treasurer of the holder is confidential.

With respect to the information you seek to withhold, a representative sample of which you have submitted as Attachment III, you state that “information on property that is in excess of three (3) years old and fit [sic] the parameters established in the Property Code is confidential.” Upon review of your comments and the submitted information, however, we find you have not adequately demonstrated, nor do the documents reflect, that sections 74.104 and 76.104 apply to the information you have submitted for review. We therefore determine that the submitted information is not excepted from disclosure under section 552.101 of the Government Code in conjunction with section 74.104 or section 76.104 of the Property Code. As you raise no other exception to disclosure, we conclude that the city must release the information at issue 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,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 186225

Enc: Submitted documents

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