



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2003

Mr. Paul C. Isham
City Attorney
City of Huntsville
1212 Avenue M
Huntsville, Texas 77340-4608

OR2003-8097

Dear Mr. Isham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190902.

The City of Huntsville (the "city") received a request for information relating to the Wynne Home project, including (1) all correspondence between the city and the Houston Endowment regarding the grant for the Wynne Home and (2) a list of all donors and pledges to the Wynne Home, including the individual's name and the amount of the donation or pledge. The requestor also sent the city a subsequent letter "to clarify that [the] request also specifically includes the name of the anonymous donor who contributed or pledged \$50,000 to the project." You inform this office that you have provided the requestor with copies of "all documents in the possession of the city with regard to correspondence concerning the grant, and donors and pledges to the Wynne Home," including all documents that pertain to the anonymous \$50,000.00 donation. You have submitted copies of that information.¹ You also inform us that "there is no City of Huntsville public record that contains the name[]" of the anonymous donor. We also received correspondence from the requestor's attorney.² We have considered all of the submitted arguments and have reviewed the submitted information.

¹You also inform us that the city has made the grant application available to the requestor.

²See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Initially, we address the city's obligations with regard to the anonymous donor's name. The Public Information Act (the "Act"), chapter 552 of the Government Code, is applicable to "public information." See Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" consists of

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.

Gov't Code § 552.002(a). Thus, virtually all of the information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.022(a)(1); see also Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also applies to information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for a governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2). Under the Act, a governmental body must make a good-faith effort to relate a request for information to public information that is within the governmental body's possession or control. See Open Records Decision No. 561 at 8-9 (1990). However, the Act does not require a governmental body to answer factual questions, conduct legal research, release information that does not exist, or create responsive information. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990). Likewise, the Act does not require a governmental body to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds that information on behalf of the governmental body that received the request for it. See Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). Furthermore, the Act applies only to tangible items such as documents and other "developed materials." See Gov't Code § 552.002(c); Attorney General Opinion JM-640 at 2 (1987) (statutory predecessor to Act encompassed questions of Polygraph Examiners Board and examinee's answers only to extent that such information was contained in documents and other developed materials).

You inform us that the city "has made every public record, as that term is defined in the Act, available to [the requestor]." You also state that the \$50,000 donation "was received as an anonymous donation and was recorded that way." You represent to this office that the anonymous donor's name is not contained in any information that was created or that is maintained by or for the city. The requestor's attorney contends, however, that the name of the anonymous donor is available to the city and that the city is required to disclose that information. The question of whether the Act requires the city to disclose the name of the

anonymous donor presents issues of fact. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts that are represented to us by the governmental body requesting our opinion or that are discernible from the information submitted for our inspection. *See* Open Records Decision No. 552 at 4 (1990). Based on the city's representations and our review of the submitted information, we conclude that the Act does not require the city to disclose the name of the anonymous donor.

We next note that the submitted information contains account numbers that are confidential under section 552.136 of the Act. This exception provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. We have marked the submitted information that is confidential under section 552.136.

The submitted information also contains e-mail addresses that are confidential under section 552.137 of the Act. As amended by the 78th Legislature, section 552.137 provides as follows:

(a) Except as otherwise provided by this section, 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.

(c) Subsection (a) does not apply to an e-mail address:

- (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;
- (2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;
- (3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or
- (4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Act of June 2, 2003, 78th Leg., R.S., ch. 1089, § 1, 2003 Tex. Sess. Law Serv. 3124 (to be codified as Gov't Code § 552.137). Section 552.137 is applicable to an e-mail address that a member of the public has provided for the purpose of communicating electronically with a governmental body. Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We have marked the submitted e-mail addresses that are confidential under section 552.137.

In summary, the Act does not require the city to disclose the name of the anonymous \$50,000.00 donor. The submitted information contains account numbers that are confidential under section 552.136 of the Act and e-mail addresses that are confidential under section 552.137.

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).

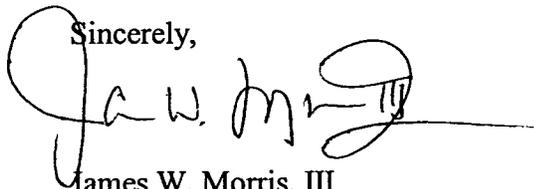
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 190902

Enc: Submitted documents

c: Mr. Donald Ray Burger
4300 Scotland
Houston, Texas 77007-7328
(w/o enclosures)