



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2003

Mr. Ken Johnson
Assistant City Attorney
City of Waco
P. O. Box 2570
Waco, Texas 76702-2570

OR2003-9107

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192941.

The City of Waco (the "city") received a request for a copy of the full and complete franchise agreement between the city and Time Warner, to include any attachments and other dealings between the city and Time Warner. Although you take no position on the release of the information, you state, and provide documentation showing, that you have notified Time Warner, the third party whose information is at issue in the current request, of this request pursuant to section 552.305 of the Government Code. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act (the "Act") in certain circumstances). Time Warner has submitted correspondence to this office regarding the release of its information. We have considered the submitted arguments and reviewed the information submitted by the city.

The attorney for Time Warner states that "[i]f the request seeks only the franchise ordinance granted by the [city] to Time Warner Cable, we do not object to the request." The attorney for Time Warner further states that "if the request seeks additional information, Time Warner Cable asserts that such requested information may be confidential and proprietary and fall within the exception from disclosure set forth in Section 552.110(b) of the Texas

Government Code.” Upon review of the information submitted to this office by the city, we find that it constitutes solely franchise ordinances and attachments thereto between the city and Time Warner, and thus conclude Time Warner has no objection to the release of this information.¹ 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 Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

¹We note that Time Warner specifically objects to the release of its (1) Monthly Franchise Fee Payment Worksheet, (2) Annual Audited Gross Receipts Report, and (3) Annual Report to the City. These documents, however, were not submitted to this office by the city. As the city did not submit these materials to this office, this ruling does not address the public nature of such materials. Rather, this ruling only addresses the documents submitted by the city.

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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 192941

Enc. Submitted documents

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