ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2004

Mr. Jeffrey L. Moore
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2004-7562

Dear Mr. Moore:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 208675.

The City of Murphy (the "city"), which you represent, received a request for information relating to (1) a named individual's expense reimbursements for a specified time interval; (2) vehicle purchases or leases over the last year; (3) purchases signed/approved by the named individual over the last year; and (4) the persons conducting an investigation approved by the city council on June 11, 2004. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and have reviewed the representative sample information you submitted.[1] We note that the submitted documents do not appear to include any information that is responsive to part 4 of the request. We therefore assume that the city has released any information that is responsive to that aspect of the request, to the extent that any information existed when the city received the request. If not, then the city must release any such information at this time.[2] We note that the Act

[1]This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

[2]*See* Gov't Code §§ 552.006, .221, .301, .302; Open Records Decision No. 664 (2000).

does not require the city to release information that did not exist when it received this request or create responsive information.[3]

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Section 6103(a) of title 26 of the United States Code makes federal tax return information confidential. The term "return information" includes "the nature, source, or amount of income" of a taxpayer. *See* 26 U.S.C. § 6103(b)(2). We have marked tax return information that the city must withhold under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.130 excepts from disclosure information that relates to "a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(2). The city must withhold the vehicle identification numbers that we have marked under section 552.130.

Section 552.136 is applicable to certain account numbers and other "access devices." This exception to disclosure 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 bank account and credit card information that the city must withhold under section 552.136. You have not demonstrated, and it is not otherwise clear to this office, that section 552.136 is applicable to any of the remaining information that you seek to withhold under this exception. We therefore conclude that you may not withhold any of the remaining information under section 552.136.

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[3]*See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

In summary: (1) the city must withhold the tax return information under section 552.101 in conjunction with section 6103 of title 26 of the United States Code; (2) the city must withhold the vehicle identification numbers under section 552.130; and (3) the city must withhold the bank account and credit card information under section 552.136. The rest of the submitted information must be released.

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).

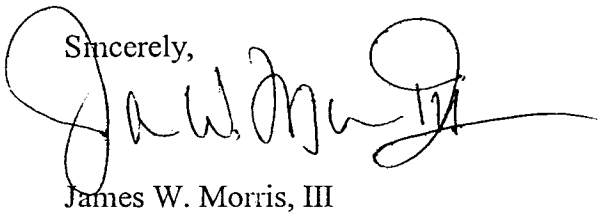
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



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

JWM/sdk

Ref: ID# 208675

Enc: Submitted documents

c: Ms. Tiara M. Ellis
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(w/o enclosures)