



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2005

Mr. Rashaad V. Gambrell
Assistant City Attorney
City of Houston Legal Department
P. O. Box 1562
Houston, Texas 77251-1562

OR2005-02666

Dear Mr. Gambrell:

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# 225094.

The City of Houston (the "city") received two requests for the following information: (1) information compiled in response to a subpoena issued in a specified federal case, and (2) the appointments and trips taken by a specified former employee of the city. You state that you will release some of the requested information to the requestors. You claim, however, that some of the remaining requested information is excepted from disclosure under sections 552.101, 552.107, 552.111, 552.117, 552.128, 552.130, 552.136 and 552.137 of the Government Code.¹ Although you take no position with respect to the remaining submitted information, you claim that it may contain proprietary information subject to exception under the Act. Pursuant to section 552.305(d) of the Government Code, you have notified the following third parties of the request and of their right to submit arguments to this office as to why their information should not be released: Texas General Land Office (the "GLO"),

¹We note that, in your December 28, 2004 letter to this office, you also claimed that the requested information is excepted from disclosure pursuant to sections 552.103, 552.108, and 552.133. However, you have not provided any arguments explaining how those exceptions are applicable to the submitted information. Therefore, we presume you no longer assert those exceptions to disclosure. *See* Gov't Code §§ 552.301, .302. Also, you did not raise sections 552.128, 552.136, and 552.137 within the ten-business-day deadline mandated by section 552.301(b) of the Government Code. *See id.* § 552.301(b). However, because the applicability of sections 552.128, 552.136, and 552.137 are compelling reasons to withhold the submitted information, we will consider your arguments under those sections. *See id.* § 552.302, *see also* Open Records Decision No. 150 at 2 (1977).

Reliant Energy, Inc. ("Reliant"), Etna Parking Inc. ("Etna"), and Camp Dresser & McKee ("Camp"). *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 to disclosure in certain circumstances). We have received comments from the GLO and Reliant. We have considered all arguments and reviewed the submitted representative sample of information.²

Initially, we address your claim against disclosure for the information in Exhibit 13. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. As part of the Texas Homeland Security Act, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. You assert that the information in Exhibit 13 is confidential under section 418.181, which provides that "[t]hose documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism." Gov't Code § 481.181.

In this instance, you explain that Exhibit 13 contains an outline of the city's strategic approach to develop a comprehensive plan regarding homeland defense. You further explain that this outline assesses the vulnerability of the city's communications systems to an act of terrorism. Based on your arguments and our review of the information at issue, we conclude that the outline in Exhibit 13 identifies the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. *See generally* Gov't Code § 421.001 (defining critical infrastructure to include "all public or private assets, systems, and functions vital to the security, governance, public health and safety, and functions vital to the state or the nation"). Therefore, Exhibit 13 is confidential under section 418.181 of the Government Code and excepted from release under section 552.101 of the Government Code.³

You assert that the information in Exhibit 5 is excepted from disclosure under section 552.128 of the Government Code, which provides as follows:

²We 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.

³As we are able to make this determination, we need not address your claim of section 418.177 of the Government Code for this information.

(a) Information submitted by a potential vendor or contractor to a governmental body in connection with an application for certification as a historically underutilized or disadvantaged business under a local, state, or federal certification program is excepted from [required public disclosure], except as provided by this section.

(b) Notwithstanding Section 552.007 and except as provided by Subsection (c), the information may be disclosed only:

(1) to a state or local governmental entity in this state, and the state or local governmental entity may use the information only:

(A) for purposes related to verifying an applicant's status as a historically underutilized or disadvantaged business; or

(B) for the purpose of conducting a study of a public purchasing program established under state law for historically underutilized or disadvantaged businesses; or

(2) with the express written permission of the applicant or the applicant's agent.

(c) Information submitted by a vendor or contractor or a potential vendor or contractor to a governmental body in connection with a specific proposed contractual relationship, a specific contract, or an application to be placed on a bidders list, including information that may also have been submitted in connection with an application for certification as a historically underutilized or disadvantaged business, is subject to required disclosure, excepted from required disclosure, or confidential in accordance with other law.

Gov't Code § 552.128. You state that "the information in Exhibit 5 was submitted to the City as part of the process to become certified as a minority business enterprise (MBE) or a women business enterprise (WBE)." The release provision of subsection 552.128(b) does not apply because the requestor is not a state or local governmental entity, and the applicant or applicant's agent has not given the city written permission to release its information. Subsection 552.128(c) does not apply here either. Therefore, we conclude that the city must withhold the information in Exhibit 5 that we have marked under section 552.128 of the Government Code. We note, however, that Exhibit 5 includes documents that were not submitted by the company at issue for certification, but instead were prepared by or for the city. Thus, this information is not excepted under section 552.128, and, as you do not make any other arguments for withholding this remaining information, you must release it.

Next, we address your assertion that the e-mails in Exhibit 6 are excepted under section 552.107(1) of the Government Code. Section 552.107(1) protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no writ). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state that the e-mails in Exhibit 6 consist of confidential communications between a city attorney and a city employee made in the furtherance of the rendition of professional legal services to the city. Based on your representations and our review of the information at issue, we agree that the e-mails in Exhibit 6 constitute confidential communications exchanged between privileged parties in furtherance of the rendition of legal services to the city. Accordingly, we conclude that the city may withhold Exhibit 6 pursuant to section 552.107(1) of the Government Code.

You claim that the information in Exhibits 7, 8, and 8-A is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 encompasses the deliberative process privilege. See Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. See *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615 (1993), this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. See Open Records Decision No. 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; see also *City of Garland v. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. See Open Records Decision No. 631 at 3 (1995). Furthermore, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. See Open Records Decision No. 615 at 5. But, if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. See Open Records Decision No. 313 at 3 (1982).

Section 552.111 can encompass communications between a governmental body and a third party consultant. See Open Records Decision Nos. 631 at 2 (1995) (section 552.111 encompasses information created for governmental body by outside consultant acting at governmental body's request and performing task that is within governmental body's authority), 563 at 5-6 (1990) (private entity engaged in joint project with governmental body may be regarded as its consultant), 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process), 462 at 14 (1987) (section 552.111 applies to memoranda prepared by governmental body's consultants). Section 552.111 is not applicable, however, to communications with a party with which the governmental body has no privity of interest or common deliberative process. See Open Records Decision No. 561 at 9 (1990).

This office has also concluded that a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be

excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

You assert that the information in Exhibits 7, 8, and 8-A consist of draft documents and communications among city staff that pertain to the policymaking processes of the city. Based on your arguments and our review of the information at issue, we conclude that the city may withhold the information we have marked under section 552.111, as this information consists of advice, recommendations, opinions, and other material reflecting the policymaking processes of the city. The remaining information you seek to withhold under section 552.111 does not consist of advice, recommendations, or opinions reflecting the policymaking processes of the city, and thus may not be withheld under that exception.

You claim that portions of the information in Exhibit 9 are excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. *See* Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You state that the employee at issue "made an election under § 552.024[.]" However, you do not indicate whether this employee elected to withhold her section 552.117 information prior to the date on which the city received the instant request for information. If the employee at issue elected prior to the receipt of this request to keep the information we have marked confidential, the city must withhold this information pursuant to section 552.117(a)(1). The city may not withhold this information under section 552.117(a)(1) if the employee at issue did not make a timely election to keep this information confidential.

You assert that Exhibit 10 is subject to section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). Accordingly, you must withhold Exhibit 10 in its entirety pursuant to section 552.130 of the Government Code.

You assert that the numbers you have highlighted in Exhibits 11 and 11-A are subject to section 552.136 of the Government Code. Section 552.136 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. An access device number is one that 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.” *Id.* Upon review of the information at issue, we agree that the bank account and credit card numbers you have highlighted must be withheld under section 552.136 of the Government Code.

Finally, you claim that Exhibit 12 includes an e-mail address that is excepted from disclosure under section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c). You inform us that the member of the public to whom the e-mail address at issue pertains has not affirmatively consented to the release of his e-mail address. The city must, therefore, withhold the e-mail address it has marked under section 552.137 of the Government Code.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this letter, Etna and Camp have not submitted any comments to this office explaining how release of the requested information would affect their proprietary interests. Therefore, these companies have provided us with no basis to conclude that they have a protected proprietary interest in any of the submitted information. *See, e.g.,* Gov’t Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Therefore, the submitted information relating to Etna and Camp is not excepted from disclosure under section 552.110 of the Government Code.

We now turn to the arguments submitted by the GLO. Section 552.104 excepts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. This exception protects a governmental body’s interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the “competitive advantage” aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate that it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body’s legitimate interests as a competitor

in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See Open Records Decision No. 514 at 2 (1988).*

The GLO asserts that it has specific marketplace interests in the information at issue because the GLO is authorized by statute to "sell or otherwise convey power generated from royalties taken in kind." Tex. Util. Code § 35.102. The GLO advises that under that authority, it has created the State Power Program through which it bids on contracts for the right to sell electrical energy to public retail customers. The GLO states it competes with other private companies for the awards of these contracts. Based on these representations, we find that the GLO has demonstrated that it has specific marketplace interests and may be considered a "competitor" for purposes of section 552.104. *See Open Records Decision No. 593 (1991).*

The GLO contends that the release of the submitted Consent to Partial Assignment, Partial Assignment and Assumption Agreement, and Fixed Price Electricity Supply Agreement would harm its marketplace interests because this information represents the method by which the GLO will provide and charge for electric energy to its electrical energy customers. The GLO further asserts that, if its competitors had access to this information, they would "be able to use the GLO's methods of delivery of electrical services and its pricing formula for such services as their own." Thus, the GLO contends that allowing competitors access to the documents at issue will undermine its ability to compete in this marketplace. Based on the GLO's representations and arguments, we conclude that the GLO has shown that release of the submitted Consent to Partial Assignment, Partial Assignment and Assumption Agreement, and Fixed Price Electricity Supply Agreement would cause specific harm to the GLO's marketplace interests. *See Open Records Decision No. 593 (1991).* We therefore conclude that the city may withhold this information in Exhibit 3 under section 552.104 of the Government Code.⁴

We now turn to Reliant's claim that portions of the remaining submitted information pertaining to it are excepted under section 552.110 of the Government Code. This section protects the proprietary interests of private persons by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision and (2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained. *See Gov't Code § 552.110(a), (b).*

⁴As our ruling regarding the submitted Consent to Partial Assignment Agreement, Partial Assignment and Assumption Agreement, and Fixed Price Electric Supply Agreement is dispositive, we need not reach Reliant's arguments regarding these documents.

The Texas Supreme Court has adopted the definition of a "trade secret" from section 757 of the Restatement of Torts, which holds a "trade secret" to be

any formula, pattern, device or compilation of information which is used in one's business, and which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business in that it is not simply information as to a single or ephemeral event in the conduct of the business, as for example the amount or other terms of a secret bid for a contract or the salary of certain employees A trade secret is a process or device for continuous use in the operation of the business [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret, as well as the Restatement's list of six trade secret factors.⁵ RESTATEMENT OF TORTS § 757 cmt. b (1939). This office has held that if a governmental body takes no position with regard to the application of the trade secret branch of section 552.110 to requested information, we will accept a private person's claim for exception as valid under that branch if that person establishes a *prima facie* case for the exception and no argument is submitted that rebuts the claim as a matter of law. *See Open Records Decision No. 552 at 5-6 (1990)*. However, we cannot conclude that section 552.110(a) applies unless it has been shown that the information meets the definition of a trade secret, and the necessary factors have been demonstrated to establish a trade secret claim. *See Open Records Decision No. 402 (1983)*.

⁵The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are:

(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980)*.

Section 552.110(b) of the Government Code exempts from disclosure “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5-6 (1999).

Based on Reliant’s arguments and our review of the information at issue, we find that Reliant has sufficiently demonstrated that portions of the submitted information in Exhibit 3 relating to it constitute trade secret information or commercial and financial information, the release of which would cause the company substantial competitive harm. Accordingly, we conclude that the city must withhold the information that we have marked pursuant to section 552.110 of the Government Code. However, we also find that no portion of the remaining submitted information constitutes trade secret information or commercial or financial information, the release of which would cause Reliant substantial competitive harm under section 552.110. *See* Open Records Decision Nos. 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative), 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Accordingly, we conclude that the city may not withhold any portion of the remaining submitted information under section 552.110 of the Government Code.

Lastly, we note that a portion of the submitted information in Exhibit 3 is copyrighted. A custodian of public records must comply with copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, we conclude that the city must withhold the following information: (1) Exhibit 13 under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code; (2) the marked information in Exhibit 5 under section 552.128 of the Government Code; (3) the information in Exhibit 6 under section 552.107(1) of the Government Code; (4) the marked information in Exhibits 8 and 8-A under section 552.111 of the Government Code; (5) the marked information in Exhibit 9 under section 552.117 of the Government Code if the employee at issue made a timely

election under section 552.024 of the Government Code; (6) Exhibit 10 under section 552.130 of the Government Code; (7) the highlighted numbers in Exhibits 11 and 11-A under section 552.136 of the Government Code; (8) the highlighted e-mail address in Exhibit 12 under section 552.137 of the Government Code; and (9) the marked information in Exhibit 3 under sections 552.104 and 552.110 of the Government Code. The remaining submitted information must be released to the respective requestors in accordance with copyright law where applicable.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/krl

Ref: ID# 225094

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