



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 14, 2005

Ms. Mia Settle-Vinson
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2005-10243

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 236051.

The City of Houston (the "city") received a request for a copy of a letter from the Texas General Land Office concerning the city's request to amend its electricity contract. You claim that the responsive information may be excepted from disclosure pursuant to sections 552.101, 552.104, 552.110, 552.113, 552.131, or 552.133 of the Government Code, but make no arguments and take no position as to whether the information is so excepted. You inform us that the city notified the Texas General Land Office (the "GLO"), the third party whose proprietary interests may be implicated by the request, of the city's receipt of the request and its right to submit arguments to us as to why any portion of the requested information should not be released to the requestor. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* 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 Act in certain circumstances). The GLO claims that a portion of the requested information is excepted from disclosure under section 552.104 of the Government Code. We have considered the claimed exceptions and have reviewed the submitted information.

Initially, we must address the applicability of section 552.007 of the Government Code to the requested information. Section 552.007 provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law. *See* Gov't Code 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). The city informs this office that, prior to the current request for a copy of the letter, it allowed the requestor to inspect the information at issue. Section 552.104 of the Government Code is a discretionary exception to disclosure under the Act and does not constitute law that makes information confidential or expressly prohibits its release for purposes of section 552.007. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 592 at 8 (1991) (statutory predecessor to Gov't Code § 552.104 subject to waiver). Accordingly, the city may not withhold the requested information under section 552.104. Furthermore, the city has not demonstrated that any of the previously released information is confidential by law; therefore, it must release this information to the requestor pursuant to section 552.007.

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).

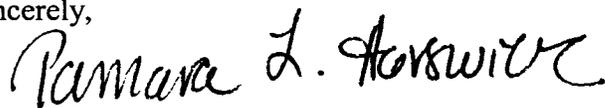
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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 Office of the Attorney General 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. 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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 236051

Enc. Submitted documents

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(w/o enclosures)

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