



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 28, 2006

Ms. Susan Hensley  
City Secretary  
City of Shenandoah  
29955 I-45 North  
Shenandoah, Texas 77381

OR2006-01949

Dear Ms. Hensley:

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# 243146.

The City of Shenandoah (the "city") received a request for "all data contained in [the city's] land and commercial comparable sales database[,] a copy of all land and commercial sales found in appraisals of commercial real estate [the city] received in 2004 and 2005[, and] any sales data [the city has] with confirmed prices from sales of land and commercial property since [January 1, 2003]." You inform us that the city does not maintain a sales database for commercial property, and does not receive appraisals from other sources.<sup>1</sup> However, you explain that city does maintain appraisals for land the city is in the process of potentially acquiring and for land that has been condemned for road right-of-way purposes. You claim that this information, which you have submitted for our review, is excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the city's procedural obligations under section 552.301 of the Government Code. Within fifteen business days of receiving a request for information, a governmental body that wishes to withhold information from public disclosure must submit to this office general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld. Gov't Code § 552.301(e)(1)(A). Although

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<sup>1</sup>The Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

you do not inform when the city received this request, we note that it is dated and appears to have been received by the city via facsimile on December 5, 2005. Based on this date, the fifteenth business day following the city's receipt of the request was December 27, 2005. *See id.* § 552.301(e)(1)(C) (a governmental body is required to submit to this office a signed statement or sufficient evidence showing the date the governmental body received the written request). However, you did not submit comments explaining why the city believes that section 552.105 would allow the submitted information to be withheld until January 3, 2006. We therefore find that the city failed to comply with the procedural requirements of section 552.301 in requesting a ruling from this office. *See id.*

According to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third-party interests. *See* Open Records Decision No. 630 (1994). However, section 552.105 is a discretionary exception under the Act that does not constitute a compelling reason sufficient to overcome the presumption that the requested information is public. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 564 (1990) (statutory predecessor to section 552.105 protects governmental body's interest and is subject to waiver). Consequently, the city may not withhold the submitted information under section 552.105.

We note, however, that some of the submitted information is subject to section 552.137, which is a mandatory exception to disclosure that cannot be waived by a governmental body and provides a compelling reason to withhold information for purposes of section 552.302.<sup>2</sup> 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). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). As such, these e-mail addresses, which we have marked, must be withheld under section 552.137 unless their owners have affirmatively consented to their release. *See* Gov't Code § 552.137(b).

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception like section 552.137 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

We also note that some of the submitted information indicates that it is protected by copyright law. A custodian of public records must comply with copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of materials that are subject to copyright law unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials that are protected by copyright law, 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, the e-mail addresses we have marked must be withheld under section 552.137 of the Government Code unless their owners have affirmatively consented to their release. The remaining submitted information must be released. However, in releasing any information that is protected by copyright, the city must comply with copyright law.

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 ten 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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel  
Assistant Attorney General  
Open Records Division

RBR/er

Ref: ID# 243146

Enc. Submitted documents

c: Ms. Abbigail Pendergraft  
O'Conner & Associates  
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Houston, Texas 77018  
(w/o enclosures)