



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 27, 2006

Ms. Gretchen Black  
Assistant City Manager  
City of Aransas Pass  
P. O. Box 2000  
Aransas Pass, Texas 78335-2000

OR2006-04215

Dear Ms. Black:

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# 247528.

The City of Aransas Pass (the "city") received a request for five categories of information regarding the city's Harbor Improvement Project. You state that you will release a portion of the requested information, but you claim that the submitted information is excepted from disclosure under section 552.131 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested third party may submit comments stating why information should or should not be released).

Initially, we note that the requestor states, and provides documentation, that he has portions of the submitted information that the city seeks to withhold under section 552.131 of the Government Code. If a governmental body voluntarily releases information to a member of the public, such information may not later be withheld unless it is confidential under other law. *See* Gov't Code § 552.007; *but see Cornyn v. City of Garland*, 994 S.W.2d 258, 265 (Tex. App.—Austin 1999, no pet.) (alleged prior disclosure of information in course of discovery did not foreclose possibility of raising litigation exception in response to subsequent request); Open Records Decision No. 579 (1990) (exchange of information among litigants in "informal" discovery is not "voluntary" release of information for purposes of statutory predecessor of section 552.007). Whether this information has

previously been voluntarily released is a fact issue that cannot be determined in the ruling process. *See* Attorney General Opinions GA-0087 at 1 (2003), GA-0003 at 1 n. 2 (2003), JC-0534 at 1 (2002) (this office does not make factual determinations in opinion process). Because we cannot determine this issue, we must rule in the alternative. If the information has been voluntarily released to the public, then the city cannot now withhold the information under section 552.131(b) and must release it. *See* Gov't Code § 552.007. We note that section 552.131(b) of the Government Code is a discretionary exception that protects a governmental body's interest and may be waived. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). If, however, the city has not previously voluntarily released the information to the public, the city may be able to withhold it under section 552.131. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Section 552.131(b) of the Government Code provides that “[u]nless and until an agreement is made with [a] business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].” Gov't Code § 552.131(b). You inform us that the submitted information relates to pending economic development negotiations involving the city and a business prospect. You state that “[a]lthough the City Council has now determined which developer that they want to use, they have not completed the final agreement with the developer. . . .” You also indicate that the submitted information includes information concerning financial incentives being offered by the city. You state that “release of the financial information is premature at this time and will be harmful to the final negotiations.” Upon review of your arguments and the submitted information, we conclude that the city may withhold the marked information under section 552.131(b). We note that the applicability of section 552.131 ends once the city finalizes an agreement with the business prospect. *See* Gov't Code § 552.131(c). As you raise no other exceptions to disclosure, the remaining 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).

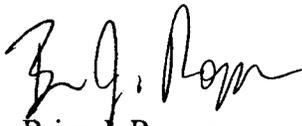
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Brian J. Rogers  
Assistant Attorney General  
Open Records Division

BJR/krl

Ref: ID# 247528

Enc. Submitted documents

c: Mr. Tom Hargrave  
122 Sea View Drive  
Aransas Pass, Texas 78336  
(w/o enclosures)