



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 23, 2006

Mr. Ignacio Perez
Assistant City Attorney
City of McAllen
P. O. Box 220
McAllen, Texas 78505-0220

OR2006-05383

Dear Mr. Perez:

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# 249741.

The City of McAllen (the "city") received a request for the following information: 1) the video tape of the city commission regular meeting held on February 27, 2006; 2) the video and tape recording of the city Civil Service Commission Meeting held on March 2, 2006; 3) all written correspondence from McAllen Fire Department clerical staff addressed to three named individuals from January 1, 2003 to the present; and 4) all written correspondence from McAllen Fire Department personnel addressed to three named individuals from January 1, 2003 to the present. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you did not submit information responsive to parts 1, 3, or 4 of the request for our review. *See* Gov't Code § 552.301(e)(1)(D). As you have not submitted this information, we assume the city has released it to the extent it existed on the date the city received this request. If not, the city must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code 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 551.104(c) of the Government Code provides that “[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3).” Gov’t Code § 551.104(c). Such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). You inform us that the portion of the submitted information pertaining to Item #9 is a video recording of a closed session of a city civil service commission meeting. We agree that the video recording of the closed session of a civil service commission meeting must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

Next, we note that the remaining submitted information that does not relate to Item #9 is a recording of an open meeting of the commission. Section 551.022 of the Open Meetings Act, chapter 551 of the Government Code, expressly provides that the “minutes and tape recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body’s chief administrative officer or the officer’s designee.” Gov’t Code § 551.022. Information that is specifically made public by statute may not be withheld from the public under any of the exceptions to public disclosure under chapter 552 of the Government Code. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, the city must release the remaining submitted recording in accordance with section 551.022.

In summary, the city must withhold the video recording concerning Item #9 of the closed session of the civil service commission meeting pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code. The remaining information must be released to the requestor. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/krl

Ref: ID# 249741

Enc. Submitted documents

c: Ms. Patsy M. Rogers
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(w/o enclosures)