



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2006

Mr. Hal George
Attorney at Law
Suite 407 New York Life Building
5350 South Staples Street
Corpus Christi, Texas 78411

OR2006-05952

Dear Mr. George:

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# 251164.

The Town of Fulton (the "town"), which you represent, received a request for 1) city council members' notes created before October 28, 2005 concerning the qualifications for candidates for the administrator position, 2) resumes submitted before October 23, 2005 by candidates for the administrator position, and 3) documents created before October 28, 2005 pertaining to policy violations by a named employee. The town received a second request from the same requestor for 1) all written minutes and or tape recording transcriptions of a specified closed meeting and 2) specified agenda requests. You state that you have released some of the requested information. We understand you to assert that the information responsive to the first request, which you have submitted, is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. You claim that the information responsive to the second request is excepted from disclosure under sections 551.104 and 551.146 of the Government Code. We have reviewed the submitted information and arguments.

Initially, we note that you acknowledge your failure to comply with the requirements of section 552.301(d) of the Government Code in regard to the first request for information. Section 552.301(d) requires a governmental body to provide to the requestor within ten business days of receiving the request, (1) a written statement that the governmental body wishes to withhold the requested information and has asked for an attorney general decision

about whether the information is within an exception to public disclosure, and (2) a copy or redacted copy of the governmental body's written communication to the attorney general asking for a decision. You inform this office that you did not supply a copy of the governmental body's written communication to the attorney general to the requestor.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 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 of Government Code); Open Records Decision No. 319 (1982). Although you assert that the submitted information, which is responsive to the first request for information, is excepted from disclosure pursuant to sections 552.103 and 552.107 of the Government Code, these are discretionary exceptions and are not compelling reasons to overcome the presumption that the information is public. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see* Open Records Decision Nos. 676 at 12 (2002) (harm to governmental body's interests under section 552.107 not compelling reason for non-disclosure); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). We therefore determine the town may not withhold the submitted information under section 552.103 or 552.107. As you raise no other exceptions to disclosure for this information, it must be released to the requestor.

Next, we address your arguments for the information responsive to the second request for information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by other statutes. 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.¹ *See* Open Records Decision No. 495 (1988). You inform us that the information responsive to the second request consists of the tape

¹As you acknowledge, the town is not required to submit the certified agenda or tape recording of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101 of the Government Code).

recording of a closed meeting of the city council.² We agree that the tape recording of a closed meeting of the city council must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

In summary, the submitted information must be released to the requestor. The town must withhold the tape recording of the closed meeting pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

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).

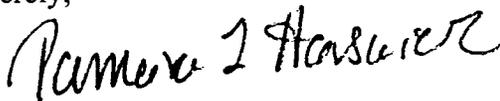
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

²You state that there are no written minutes or tape recording transcriptions of this closed meeting. We note that 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).

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/eb

Ref: ID# 251164

Enc. Submitted documents

c: Mr. Gene A. Garcia
Attorney at Law
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(w/o enclosures)