



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 13, 2006

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

OR2006-06241

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# 251275.

The City of McAllen (the "city") received a request for the following information:

- 1) A copy of the building permit for the Public Safety Building.
- 2) Copies of all travel and training sessions attended by Interim Fire Chief Amado Cano since he was appointed to the position in 2004.
- 3) Any and all copies of job performance evaluations done by the City Commission on Amado Cano.
- 4) A copy of the Fire Department Budget for 2005 and 2006.
- 5) The names and positions of every Fire Department employee assigned to the Fire Prevention Division, and the date that they were assigned to the positions.
- 6) Copies of all the overtime worked by the 40 hour per week personnel within the McAllen Fire Department and the acting pay for each of these individuals.

You claim that the city is precluded from releasing information responsive to request number 3 pursuant to section 551.104 of the Government Code. We have considered your arguments.

Initially, we note that you did not submit the requested building permit, travel/training sessions, budget, and fire department personnel information. We assume that, to the extent this information existed when the city received the request for information, you have released it to the requestor. If not, then you must do so immediately. *See* Gov't Code §§ 552.006, 552.301, 552.302; Open Records Decision No. 664 (2000).

Next, you indicate that there is no written job performance evaluation responsive to request number 3. Rather, you inform us that the only responsive evaluation is a discussion contained on the tape recording of a closed city commission executive session. 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)." Thus, 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). Accordingly, the city must withhold the responsive tape recording pursuant to 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).

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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 251275

c: Ms. Karol Montes
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