ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2006

Mr. Mark S. Jackley
Interim City Manager
City of Live Oak
8001 Shin Oak Drive
Live Oak, Texas 78233-2497

OR2006-11978

Dear Mr. Jackley:

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# 261651.

The City of Live Oak (the "city") received a request for the "recent audit(s) conducted on the past city manager's office," including results and total cost, as well as information related to the status of the city budget for 2005 through 2006. You state the city will make some of the responsive information available to the requestor but seek to withhold other information. We have considered your arguments and reviewed the submitted information.

We must address the city's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body that wishes to withhold requested information from disclosure must ask for the attorney general's decision and state the exceptions in the Act that apply within ten business days after receiving a request for information. *See* Gov't Code § 552.301(a), (b). Further, pursuant to section 552.301(e), the governmental body must, within fifteen business days of receiving the request, submit to this office 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). In this instance, the city failed to identify any exceptions to disclosure that it claims are applicable to the submitted information. Consequently, we find that the city failed to comply with the procedural requirements of section 552.301.

Pursuant 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 information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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). A compelling reason exists when third-party interests are at stake, or when information is confidential under other law. Open Records Decision No. 150 (1977). The city has not demonstrated that any of the submitted information implicates third-party interests or is confidential by law. Accordingly, the 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,

Ramsey Abarca

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

Ref: ID# 261651

Enc. Submitted documents

c: Mr. L. J. Diaz, Jr.
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(w/o enclosures)