



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2006

Ms. Wendy E. Ogden
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2006-12180

Dear Ms. Ogden:

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# 262122.

The City of Corpus Christi (the "city") received a request for all recorded communications regarding the city's Beach Access Plan Modifications since January 1, 2006. You state that the city will release some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.107, 552.111, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under the Act. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the

¹In subsequent correspondence with this office, the city partially withdrew its assertion of section 552.107 of the Government Code for a portion of the information submitted as Exhibit B. We also note that although the city initially asserted section 552.101 of the Government Code as an exception to disclosure, the city did not submit comments explaining the applicability of that exception, nor did the city identify any information it wanted to withhold under that exception. Thus, we presume the city no longer asserts section 552.101 as an exception to disclosure. *See* Gov't Code §§ 552.301, .302.

written request. *See* Gov't Code § 552.301(b). You state that the city received the present request for information on July 26, 2006. The city, however, did not request a decision from this office until August 10, 2006. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find 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 submitted information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 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); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Sections 552.107 and 552.111 of the Government Code are discretionary exceptions to disclosure that protect the governmental body's interests and may be waived by the governmental body. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 630 (1994) (statutory predecessor to section 552.107 subject to waiver), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). Thus, these sections do not demonstrate a compelling reason to withhold the submitted information from the public. We therefore determine the city may not withhold the submitted information pursuant to sections 552.107 and 552.111 of the Government Code. However, because section 552.137 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will address your arguments under this exception.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses we have marked do not appear to be of a type specifically excluded by section 552.137(c). Therefore, the city must withhold the e-mail addresses we have marked under section 552.137. The remaining 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,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/eb

Ref: ID# 262122

Enc. Submitted documents

c: Mr. Michael McCutcheon
203 Jackson Place
Corpus Christi, Texas 78411
(w/o enclosures)