



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 25, 2006

Mr. Jorge Botello  
Executive Director  
Community Council of Southwest Texas, Inc.  
P.O. Drawer 1709  
Uvalde, Texas 78802

OR2006-12609

Dear Mr. Botello:

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# 263037.

The Community Council of Southwest Texas, Inc. (the "council") received requests for audio recordings, agendas, and minutes of certain regular and executive committee meetings, a list of the council's board of directors, the council's charter, information pertaining to bonuses paid to council employees, certain expense reports, information pertaining to any training sessions attended by council administrators, information pertaining to the election of board members, information pertaining to council employees' salaries, and information pertaining to any expenses incurred for executive committee meetings. You indicate that most of the requested information has been or will be released. You also indicate that information pertaining to employee bonuses does not exist.<sup>1</sup> You ask this office to determine if minutes of council meetings held in closed session and the payroll checks of council employees may be released. You have not submitted this information for our review, nor have you submitted arguments against the disclosure of this information.

Initially, we must address the council's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving

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<sup>1</sup>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).

the request. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. The first written request, which you have submitted, shows that it was received by the council on August 1, 2006. However, you did not request a ruling from this office until August 22, 2006. Furthermore, you did not submit a copy or representative sample of the requested information for our review, nor did you submit comments stating the reasons why the requested information is excepted from disclosure. Consequently, we find that the council 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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason to withhold information exists when some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because you have not submitted the requested payroll checks for our review, we have no basis to conclude that the checks are confidential under other law. Thus, we have no choice but to order you to release the requested payroll checks in accordance with section 552.302 of the Government Code.<sup>2</sup> If you believe the requested payroll checks are confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

We note, however, that a governmental body is not required to submit the minutes of a closed meeting to this office for review. *Cf.* Open Records Decision No. 495 at 4 (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). Therefore, we will determine if the requested minutes are confidential.

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<sup>2</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to withhold a living person's social security number without the necessity of requesting a decision from this office under the Act.

Section 552.101 of the Government Code<sup>3</sup> excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. The Open Meetings Act (“OMA”), which establishes the general rule that every meeting of every governmental body shall be open to the public, permits closed meetings for certain purposes. A governmental body that conducts a closed meeting must either keep a certified agenda or make a tape recording of the proceeding, except for private attorney consultations. Gov’t Code § 551.103. In addition, this office has found that minutes of a closed meeting are confidential. *See* Open Records Decision No. 60 (1974) (closed meeting minutes are confidential under predecessor to section 551.104); *see also* Open Records Decision Nos. 563 (1990) (minutes of properly held executive session are confidential under OMA), 495 (information protected under predecessor to section 551.104 cannot be released to member of public in response to open records request). Accordingly, based on your representations, we find that the requested minutes of council meetings held in closed session must be withheld under section 552.101 of the Government Code in conjunction with chapter 551 of the Government Code.

In summary, the council must release the requested payroll checks. The council must withhold the minutes of meetings held in closed session under section 552.101 of the Government Code in conjunction with chapter 551 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

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception like section 552.101 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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/dh

Ref: ID# 263037

Enc. Submitted documents

c: Mr. Henry John Yeackle IV  
c/o Jorge Botello  
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P.O. Drawer 1709  
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(w/o enclosures)