



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2006

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2006-14583

Dear Ms. Sims:

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# 266600.

The City of Lubbock (the "city") received a request for information related to the status of a sexually oriented business permit. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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." Gov't Code § 552.101. You assert that portions of the requested information are confidential under the decision in *N.W. Enters., Inc. v. City of Houston*, 352 F.3d 162 (5th Cir. 2003). The question in *N.W. Enterprises* was the constitutionality of an ordinance of the City of Houston regulating sexually oriented businesses and specifying the personal information required of individuals applying for permits to work as managers or entertainers in such businesses. With regard to the required public disclosure under the Act of certain information provided by entertainers and managers in their permit applications, the district court in *N.W. Enterprises* concluded that

[T]here is meaningful potential danger to individuals working in sexually oriented businesses if the information in their permit applications is disclosed to the public. The Court concludes further that the potential for disclosure is

likely to have a chilling effect on the applicants' protected speech. These dangerous and chilling effects are sufficiently severe that the information should be held confidential by the city.

N.W. Enters., Inc. v. City of Houston, 27 F.Supp.2d 754, 843 (S.D. Tex.1998). The Fifth Circuit Court of Appeals, in upholding the confidentiality determination of the district court, stated that "[b]ecause the district court declared the information on entertainer and manager permit applications confidential under the [Act], the City cannot disclose it to the public." *N.W. Enters.*, 352 F.3d at 195. The appellate court also agreed that the entertainers' and managers' home addresses and telephone numbers are confidential. *Id.* Thus, pursuant to that decision, information revealing the identity of a manager of a sexually-oriented business, including the manager's home address and telephone number, is generally confidential. Based on your representations and our review, we have marked the portions of the submitted information that reveal the personal information of sexually oriented business managers that must be withheld under section 552.101 in conjunction with the ruling in *N.W. Enterprises*. However, while some of the submitted information is related to a manager, you have failed to demonstrate how this information identifies the manager. Thus, we have marked for release the business names and addresses contained in the submitted information. The documents also contain the names and addresses of individuals who are not identified as managers or entertainers. You do not explain, nor can we discern, how this information is protected under the ruling in *N.W. Enterprises*. Accordingly, the names and addresses of business owners who are not managers or entertainers working in the business may not be withheld by the city.

Section 552.130 of the Government Code exempts from public disclosure information that relates to a Texas driver's license, motor vehicle title, or registration issued by an agency of this state. Gov't Code § 552.130. We note that while your brief asserts that the submitted information includes copies of Texas driver's licenses, we are unable to identify any Texas motor vehicle record information in the submitted information. The only driver's license number we are able to identify is a Virginia license number of a business owner. However, section 552.130 only applies to Texas motor vehicle record information. Accordingly, you may not withhold any of the submitted information under section 552.130.

In summary, you must withhold the marked information under section 552.101 in conjunction with the decision in *N.W. Enterprises*. 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).

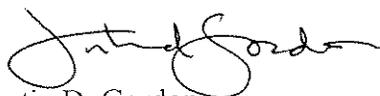
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/sdk

Ref: ID# 266600

Enc. Submitted documents

c: Mr. Joe Urbanovski
3201 43rd Street
Lubbock, Texas 79413
(w/o enclosures)