



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 8, 2007

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

OR2007-01702

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# 271922.

The City of Corpus Christi (the "city") received two identical requests from the same requestor for all email communications of three named city airport employees from November 19, 2006 to November 24, 2006. You state that the city will release most of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.117, 552.131, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which consists of a representative sample.<sup>1</sup>

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is received. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received. In this case you inform us that the employees at issue timely elected confidentiality under section 552.024. Therefore, the city must withhold the information we have marked in Exhibit C under section 552.117(a)(1).

Next, you claim that Exhibits A and B are confidential under section 552.131 of the Government Code. Section 552.131(a) of the Government Code excepts from public disclosure a business prospect's trade secret or commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the governmental body's territory. Gov't Code

§ 552.131(a). Section 552.131(a) only protects the proprietary information of a third party, not a governmental body. After reviewing the city's arguments and the submitted information, we conclude that, the city has not demonstrated that this information is either protected trade secret information or commercial or financial information of a business prospect. Furthermore, no business prospect of the city has submitted any arguments to this office explaining the applicability of section 552.131(a) to the information at issue. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise or governmental body must show by specific factual evidence that release of information would cause it substantial competitive harm). Therefore, we find that you have not demonstrated the applicability of section 552.131(a) to the submitted information, and it may not be withheld on that basis.

Section 552.131(b) of the Government Code provides that "[u]nless and until an agreement is made with [a] business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure]." Gov't Code § 552.131(b). You inform us that the information in Exhibit A relates to incentive offers involving the city and a business prospect. You also indicate that the information in Exhibit B consists of correspondence with prospective sponsors pertaining to the airport's Sky High Points Program for travelers. Upon review of your arguments and the submitted information, we conclude that the city may withhold a portion of the information in Exhibit A, which we have marked, under section 552.131(b). We note that the applicability of section 552.131 ends once the city finalizes an agreement with the business prospect. *See id.* § 552.131(c). However, you have

failed to demonstrate how the remaining information in Exhibit A or any of the information in Exhibit B consists of financial or other incentives offered to business prospects for purposes of section 552.131(b). Therefore, we conclude that the remaining information is not excepted from disclosure under section 552.131(b), and it may not be withheld on that basis.

Finally, we address your claim under section 552.137 of the Government Code, which excepts from public disclosure certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *Id.* § 552.137. Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The marked e-mail addresses does not appear to be of a type specifically excluded by section 552.137(c). Thus, unless the owners of the email addresses have affirmatively consented to their release, the city must withhold the e-mail addresses you have marked, as well as the additional email address we have marked, in Exhibit B under section 552.137. *See id.* § 552.137(b).

In summary, the city must withhold the information we have marked in Exhibit C under section 552.117(a)(1) of the Government Code. The city may withhold the information we have marked in Exhibit A under section 552.131(b) of the Government Code. The city must withhold the marked e-mail addresses in Exhibit B under section 552.137 of the Government Code unless the owners of the email addresses have affirmatively consented to their release. The remaining 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

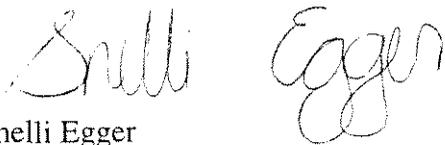
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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,



Shelli Egger  
Assistant Attorney General  
Open Records Division

SE/kr1

Ref: ID# 271922

Enc. Submitted documents

c: Mr. Hollis Q. Grizzard, Jr.  
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(w/o enclosures)