



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 8, 2007

Ms. Linda L. Sjogren
Shotts & Sjogren, LLP
For the City of San Angelo
P. O. Box 388
Dublin, Texas 76446

OR2007-02635

Dear Ms. Sjogren:

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#272677.

The City of San Angelo (the "city"), which you represent, received a request for a specified report delivered to the city council on a specified date, a specified complaint against Judge Allen Gilbert, and the judge's personnel file. You state that some of the responsive information will be released. You further state that some of the requested information does not exist.¹ You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have also received correspondence from the city attorney, who also argues that the information is excepted from disclosure under section 552.101. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you and the city attorney claim and reviewed the submitted information.

¹We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

²The city informs us that the requestor has agreed to the city's redaction of a portion of the requested information such as address and telephone number of city employees, social security numbers, driver's license numbers, and personal financial information. See Gov't Code § 552.222 (governmental body may ask requestor to clarify or narrow scope of request).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information protected by other statutes, like section 33.032 of the Government Code, which provides that “[e]xcept as otherwise provided by this section and section 33.034, the papers filed with and proceedings before the [State Commission on Judicial Conduct] are confidential prior to the filing of formal charges.” *Id.* §33.032(a).

The city attorney states that the submitted information has been filed with the State Commission on Judicial Conduct in reference to a pending complaint. The city attorney further inform us that none of the exceptions to confidentiality apply. Based upon the city attorney’s arguments and our review of the information at issue, we determine that the submitted information is confidential under section 33.032 of the Government Code, and must be withheld under section 552.101 of the Government Code.³

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

³As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/krl

Ref: ID# 272677

Enc. Submitted documents

c: Mr. Paul Anthony
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