



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2007

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2007-05682

Dear Ms. Chang:

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# 278210.

The City of Houston (the "city") received a request for seventeen categories of information pertaining to the Housing Opportunities for Persons with AIDS program and the AIDS Foundation of Houston ("AFH"). You state that a portion of the responsive information will be released to the requestor. You claim that portions of the submitted information are excepted from disclosure under section 552.137 of the Government Code. Additionally, you claim that portions of the submitted information may implicate the proprietary interests of the third party, AFH, although you take no position as to whether the information is so excepted. Pursuant to section 552.305, you state, and provide documentation showing, that you notified AFH of the request and of its right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We note that AFH has submitted comments stating that it does not object to release of the information at issue. We have considered the exception the city claims and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304

(providing that interested party may submit comments stating why information should or should not be released).

We now turn to the city's claim under section 552.137 of the Government Code. Section 552.137 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 at issue are not the type specifically excluded by section 552.137(c). You inform us that the individuals to whom these e-mail addresses pertain have not consented to their release. Accordingly, the city must withhold the e-mail addresses you have marked under section 552.137 of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by statute.¹ Section 1702.284 of the Occupations Code provides as follows:

Information contained in alarm systems records maintained by a governmental body that concerns the location of an alarm system, the name of the occupant of an alarm system location, or the type of alarm system used is confidential and may be disclosed only to the [Texas Commission on Private Security] or as otherwise required by state law or court order.

Occ. Code § 1702.284. We have marked the information which must be withheld under section 552.101 in conjunction with section 1702.284.

In summary, the city must withhold the e-mail addresses you have marked pursuant to section 552.137 of the Government Code. The city must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 1702.284 of the Occupations Code. The remaining submitted information must be released.

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

¹The 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).

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,

A handwritten signature in black ink, appearing to read "M. Alan Akin", with a long horizontal flourish extending to the right.

M. Alan Akin
Assistant Attorney General
Open Records Division

MAA/jb

Ref: ID# 278210

Enc. Submitted documents

c: Mr. George Quintero, Jr.
5353 Institute Lane, #33
Houston, Texas 77005
(w/o enclosures)

Mr. Christopher B. Gilbert
Bracewell & Guiliani, L.L.P
711 Louisiana Street, Suite 2300
Houston, Texas 77002-2770
(w/o enclosures)

Ms. Kelly McCann
Chief Executive Officer
AIDS Foundation of Houston
3202 Wesleyan Annex
Houston, Texas 77027
(w/o enclosures)