



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 23, 2007

Ms. Heather Silver  
Assistant City Attorney  
City of Dallas  
Office of the City Attorney  
City Hall  
Dallas, Texas 75201

OR2007-06438

Dear Ms. Silver:

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# 279230.

The City of Dallas (the "city") received a request for several categories of information pertaining to tax increment funding.<sup>1</sup> You state that the requestor has withdrawn the portion of the request regarding the responsive third party information. You state that the remaining responsive information is excepted from disclosure under sections 552.107 and 552.137 of

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<sup>1</sup>The city sought and received a clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.<sup>3</sup>

Initially, we note and you acknowledge that the city has not complied with the procedural requirements of section 552.301 of the Governmental Code in requesting this ruling with regard to the remaining responsive information at issue. *See* Gov't Code § 552.301(b), (e). 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 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, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Although you raise section 552.107 of the Government Code, this is a discretionary exception to public disclosure that protects the governmental body's interest and may be waived. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). However, you also raise section 552.137 of the Government Code, which can provide a compelling reason to withhold information; therefore, we will address your section 552.137 argument.

Section 552.137 of the Government Code 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 address you have marked in Exhibit F is not the type specifically excluded by section 552.137(c). Therefore, unless the individual whose e-mail

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<sup>2</sup>Although you also raise section 552.101 of the Government Code in conjunction with the attorney-client privilege, under Texas Rule of Evidence 503, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Thus, we will not address your claim that the submitted information is confidential under section 552.101 in conjunction with rule 503. Further, the Texas Supreme Court has held that the Texas Rules of Evidence are other law that make information confidential for the purposes of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). The information for which you claim the attorney-client privilege is not encompassed by section 552.022; and thus, we do not address rule 503.

<sup>3</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.

address is at issue consented to release of the e-mail address, the city must withhold it in accordance with section 552.137 of the Government Code.

In summary, unless the individual whose e-mail address is at issue consented to release of the e-mail address, the city must withhold it in accordance with section 552.137 of the Government Code. The remaining information at issue 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 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).

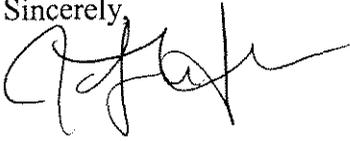
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/ma

Ref: ID# 279230

Enc. Submitted documents

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