



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 6, 2007

Mr. S.A. "Drew" Gibbs
City Attorney
City of Payne Springs
Municipal Court
9692 State Highway 198 South #2
Payne Springs, Texas 75156

OR2007-11632

Dear Mr. Gibbs:

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# 288287.

The City of Payne Springs (the "city") received a request for the audio tapes and minutes of a specific city council meeting, including the portion that was held in closed session. You state that the city has provided the requestor with a copy of the certified agenda of the open portion of the meeting. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 551.104(c) of the Government Code. Section 551.104(c) provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Thus, such information cannot be released to a member of the public in response to an open records request. *See Open Records Decision No. 495 (1988)*. You inform us that Exhibit 4 is a certified agenda of a closed session of a city council meeting and that part of Exhibit 5 constitutes an audio recording of the same meeting. Therefore, we agree that the city must withhold Exhibit 4 and the audio recording of the

closed session in Exhibit 5 under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code. We note that the remainder of the recording in Exhibit 5 and the entire recording in Exhibit 6 capture only the open meeting. Accordingly, this information is not confidential pursuant to section 551.104 and must be released to the requestor. If the city, however, lacks the technical capability to redact the closed session information from the audio recording in Exhibit 5, it must withhold Exhibit 5 in its entirety. *See* Open Records Decision No. 364 (1983).

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).

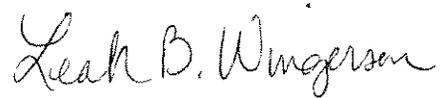
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 288287

Enc. Submitted documents

c: Ms. Linda Carr
297 Whispering Oaks Trail
Mabank, Texas 75156
(w/o enclosures)