



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 26, 2007

Ms. Bertha A. Ontiveros
Assistant City Attorney
City of El Paso
2 Civic Center Plaza 9th Floor
El Paso, Texas 79901

OR2007-15379

Dear Ms. Ontiveros:

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# 295357.

The City of El Paso (the "city") received two requests from the same requestor for nine categories of information, including information submitted to the city by Aetna Insurance Company ("Aetna") as part of Aetna's bid for a health insurance program. You take no position with respect to the public availability of the information that you have submitted. You believe, however, that the submitted information implicates Aetna's interests. You notified Aetna of the request for its information and of Aetna's right to submit arguments to this office as to why the information should not be released.¹ We received correspondence from Aetna. We have considered Aetna's arguments and have reviewed the submitted information. We assume that the city has released any other information that is responsive to these requests, to the extent that such information existed when the city received the requests. If not, then any such information must be released immediately.² See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

²We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

We note that the submitted information was the subject of previous requests for information, as a result of which this office issued Open Records Letter No. 2007-12843 (2007). You do not indicate that there has been any change in the law, facts, and circumstances on which the previous ruling is based. Therefore, the city must dispose of the submitted information in accordance with Open Records Letter No. 2007-12843.³ See Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

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

³As we are able to make this determination, we do not address the arguments that we received from Aetna.

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 'James W. Morris, III', with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ma

Ref: ID# 295357

Enc: Submitted documents

c: Mr. Michael Cohen
Law Offices of Michael Cohen
310 North Mesa Suite 515
El Paso, Texas 79901
(w/o enclosures)

Mr. Louie Heerwagen
Aetna Life Insurance Company
P.O. Box 569440
Dallas, Texas 75356-9440
(w/o enclosures)

Mr. Mark R. Chulick
Aetna Life Insurance Company
2777 Stemmons Freeway
Dallas, Texas 75207
(w/o enclosures)