



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 18, 2008

Ms. Tina L. Snelling
Assistant County Attorney
Brazos County Courthouse
300 East 26th Street, Suite 325
Bryan, Texas 77803-5327

OR2008-03624

Dear Ms. Snelling:

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# 305070.

Brazos County (the "county") received a request for fourteen categories of information pertaining to a proposed race track facility. You have informed the requestor that you do not have information responsive to seven categories of the request.¹ You state that you have provided information responsive to one category of the request to the requestor. You indicate that you have provided the requestor with a web address to access a portion of the requested information via a website.² You claim that the remaining requested information is not subject to the Act. In the alternative, you contend that the county is prohibited from providing the remaining information pursuant to Rule 8.04 of the Texas Rules of Disciplinary

¹We 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).

²Sending a requestor to a specific web address instead of providing a paper copy of information is an appropriate response to a request for information as long as the requestor is satisfied with the referral to the specified website. If the requestor here is not satisfied with this referral, then you must provide a copy of the requested information to him. *See* Open Records Decision No. 682 at 3 (2005) (ruling that a public information officer does not comply with section 552.221 of the Government Code by referring a requestor, even a requestor with Internet access, to its website).

Procedure.³ We have considered your arguments and reviewed the submitted representative sample of information.⁴

Section 552.002(a) of the Act provides:

(a) In this chapter, "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Information is generally subject to the Act when it is held by a governmental body and it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties. *See* Open Records Decision No. 635 (1995). Thus, virtually all information in the physical possession of a governmental body is public information that is encompassed by the Act. Gov't Code § 552.002a(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). In this instance, the information at issue relates to an application to the Brazos County Commissioner's Court for an entertainment venue permit. You state that the information at issue has "no relevance to the transaction of official county business as no policy yet exists regarding a race track permit[.]" However, the county has submitted for our review, a draft permit that the county is in the process of promulgating. Thus, we find that although the county states that it does not yet specifically regulate race tracks, the regulation of such ventures does constitute official county business, and the county is in the process of formulating such regulations.

Next, you state that the information at issue is not subject to the Act because it was delivered unsolicited to the county. The content of the information at issue pertains solely to the request for a permit to be issued by the county. Further, even though the information at issue

³We note that although you initially raised sections 552.106, 552.107, 552.110, 552.111, 552.112, 552.136, 552.137, and 552.147 of the Government Code, you have not provided any arguments in support of these claims. Thus, the county has waived its claims under sections 552.106, 552.107, 552.111, and 552.112. *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general). Further, the county has not demonstrated that any of the submitted information is confidential for purposes of sections 552.110, 552.136, 552.137, or 552.147. *See* Gov't Code §§ 552.301, 302.

⁴We 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.

was delivered unsolicited to the county, we find that it relates solely to the official business of the county. Thus, we find that the information at issue constitutes public information as defined by section 552.002 of the Government Code. *See* ORD Nos. 635, 425.

Next, you state that the county is prohibited from providing the information at issue pursuant to rule 8.04 of the Texas Rules of Disciplinary Procedure. Rule 8.04 provides as follows:

The Board of Disciplinary Appeals shall hear and determine all questions of law and fact. When an attorney has been convicted of an Intentional Crime or has been placed on probation for an Intentional Crime without an adjudication of guilt, he or she shall be suspended as an attorney licensed to practice law in Texas during the appeal of the conviction or the order of deferred adjudication. Upon introduction into evidence of a certified copy of the judgment of conviction or order of deferred adjudication and a certificate of the Clerk of the Supreme Court that the attorney is licensed to practice law in Texas, the Board of Disciplinary Appeals shall immediately determine whether the attorney has been convicted of an Intentional Crime or granted probation without an adjudication of guilt for an Intentional Crime. Uncontroverted affidavits that the attorney is the same person as the person convicted or granted probation without an adjudication of guilt are competent and sufficient evidence of those facts. Nothing in these rules prohibits proof of the necessary elements in such Disciplinary Action by competent evidence in any other manner permitted by law. The Board of Disciplinary Appeals shall sit, hear, and determine whether the attorney should be disciplined and enter judgment accordingly within forty-five days of the answer day; however, any failure to do so within the time limit will not affect its jurisdiction to act. Any suspension ordered during the appeal of a criminal conviction or probation without an adjudication of guilt is interlocutory and immediately terminates if the conviction or probation is set aside or reversed.

Tex. R. Disciplinary P. 8.04. Upon review, we find that rule 8.04 of the Texas Rules of Disciplinary Procedure does not make information confidential for the purposes of the Act. ORD 681 at 9; *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential); *see also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure). Because rule 8.04 does not make confidential information that is subject to disclosure under the Act, the county may withhold the information at issue from the public only if the information is confidential under other law or an exception in subchapter C of the Act applies.

We note that the requested information includes a corporate tax return form. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential

by law, either constitutional, statutory, or by judicial decision.”⁵ Gov’t Code § 552.101. Section 552.101 encompasses information made confidential by section 6103(a) of title 26 of the United States Code, which provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). Accordingly, this information, which we have marked, is confidential under section 6103(a) of title 26 of the United States Code, and the county must withhold it under section 552.101 of the Government Code in conjunction with federal law.

Finally, we note that some of the submitted materials are copyrighted. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the county must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The remaining information must be released. Information that is subject to copyright must be released in accordance with that law.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

⁵The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

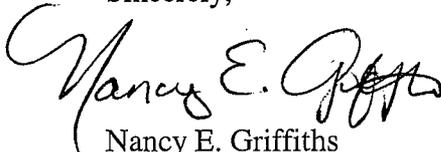
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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 challenge 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,



Nancy E. Griffiths
Assistant Attorney General
Open Records Division

NEG/jb

Ref: ID# 305070

Enc. Submitted documents

c: Mr. Wayne T. Rife
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(w/o enclosures)