



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2008

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2008-07167

Dear Mr. Phillips:

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# 311025.

The City of Fort Worth (the "city") received a request for seven categories of information regarding two specified properties. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that you have only submitted an incident report, some daily trip logs for an excursion company along with related checks to the city, a marine insurance policy, and a series of e-mails. Therefore, to the extent that information responsive to the other categories of requested information existed on the date the city received the request, we assume that it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we address the requestor's assertion that the city failed to meet its obligations under section 552.301(b) of the Government Code. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. *Id.* § 552.301(b). You acknowledge the city received the request for information on February 15, 2008. Because the city's estimated cost to process the request was over \$100, the city explains it required the requestor to make a deposit for payment of the anticipated costs in accordance with section 552.263 of the Government Code. Section 552.263(a) provides that a governmental body may require a deposit for payment of anticipated costs if the estimated cost exceeds \$100 if the governmental body has more than 15 full-time employees. *Id.* § 552.263(a)(1). Further, section 552.263(e) provides if the governmental body requires a deposit under section 552.263, a request for public information is considered to have been received by the governmental body on the date the governmental body receives the deposit. *Id.* § 552.263(e). The city informs us that it received the deposit on March 4, 2008. Thus, pursuant to section 552.263(e), March 4, 2008 is the date the city received this request for the purposes of 552.301. Accordingly, the city's ten-business-day deadline was March 18, 2008. The city's request for a ruling from this office was postmarked March 18, 2008. Therefore, we find the city's request for a ruling was timely. *See* Gov't Code § 552.301(b).

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. Section 31.0391 of the Parks and Wildlife Code provides as follows:

(a) The [Parks and Wildlife Department] or a county may not release the name or address of a person recorded in the [Parks and Wildlife Department] vessel and outboard motor ownership records unless the [Parks and Wildlife Department] or county receives a written request that:

- (1) contains the requestor's name and address; and
- (2) states that the use of the information is for a lawful purpose.

(b) This section does not apply to release of information to:

- (1) a peace officer as defined by Article 2.12, Code of Criminal Procedure, who is acting in an official capacity; or

(2) a state official or an official of a political subdivision of this state who requests the information for tax purposes.

Parks & Wild. Code § 31.0391. Section 31.0391 only applies to release by a county or the Parks and Wildlife Department of certain information contained in vessel and outboard motor ownership records. The city contends the name and address of the registered owner of the watercraft contained in the incident report at Exhibit C-1 is confidential under section 31.039. The incident report reflects that the investigating officer contacted the Parks and Wildlife Department to determine the ownership of a sunken boat. The Parks and Wildlife Department presumably released the owner's name and address from its ownership records to the officer in accordance with section 31.0391(b)(1). Section 31.0391(b)(1) does not, however, restrict the re-release of this information. Accordingly, you have failed to demonstrate that the owner's name and address contained in the submitted report are confidential under section 31.0391. Therefore, the city may not withhold the information you have highlighted in Exhibit C-1.

Next, you contend that portions of Exhibits C-2 and C-3 are excepted from disclosure under section 552.136 of the Government Code. Section 552.136 states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). We agree that the bank account numbers and routing numbers you have highlighted in Exhibit C-2, and insurance policy numbers you have highlighted in Exhibit C-3, are access device numbers excepted from disclosure under section 552.136. Thus, the city must withhold the bank account numbers and routing numbers you have highlighted in Exhibit C-2, and insurance policy numbers you have highlighted in Exhibit C-3 under section 552.136 of the Government Code.

We note that the checks in Exhibit C-2 also contain Texas driver's license numbers that are subject to section 552.130 of the Government Code.¹ Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

Gov't Code § 552.130. Accordingly, the city must withhold the Texas driver's license numbers we have marked under section 552.130 of the Government Code.

¹The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Next, we address your assertion that the e-mail address you have highlighted in Exhibit C-4 is excepted from disclosure under section 552.137 of the Government Code. Section 552.137 states that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov’t Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). You state the personal e-mail address you have highlighted in Exhibit C-4 is not excluded by section 552.137(c). You do not state that the owner of this e-mail address has consented to its public disclosure. Therefore, the city must withhold the e-mail address you have highlighted under section 552.137 of the Government Code, unless the owner affirmatively consents to its disclosure.

In summary, the city must withhold 1) the bank account numbers and routing numbers you have highlighted in Exhibit C-2, and insurance policy numbers you have highlighted in Exhibit C-3 under section 552.136 of the Government Code; 2) the Texas driver’s license numbers we have marked in Exhibit C-2 under section 552.130 of the Government Code; and 3) the e-mail address you have highlighted in Exhibit C-4 under section 552.137 of the Government Code, unless the owner affirmatively consents to its disclosure. The remaining information must be released to the requestor.

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 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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 311025

Enc. Submitted documents

c: Ms. Kathy Armstrong
512 East Glendale
Crowley, Texas 76036
(w/o enclosures)