



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 30, 2008

Mr. Jesús Toscano, Jr.
Administrative Assistant Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2008-10341

Dear Mr. Toscano:

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# 317314.

The City of Dallas (the "city") received two requests for information regarding city officials and employees who received free tickets from the House of Blues or Live Nation for performances at the Smirnoff Music Centre. You state that you will release some information to the requestors. You claim that some of the submitted information is excepted from disclosure under sections 552.116, 552.117, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which consists of a representative sample.¹ We have also received and considered comments submitted by one of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that one of the requestors, in comments submitted to this office, excludes the following categories of information from his request: audit working papers; the home addresses, home telephone numbers, social security numbers, and family member information pertaining to current or former employees or officials who have requested that such information be kept confidential; and certain e-mail addresses. Therefore, the information that you seek to withhold from this requestor is not responsive to his request. This ruling does not address the public availability of the submitted information that is not responsive to this request, and the city need not release that information to this requestor.

¹We 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.

We now address your arguments with respect to the submitted responsive information. You claim that Exhibit B is excepted from disclosure under section 552.116 of the Government Code. Section 552.116 provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, or a joint board operating under Section 22.074, Transportation Code, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Id. § 552.116. You state that Exhibit B consists of information prepared or maintained by the city auditor (the "auditor") in conducting an audit pursuant to chapter IX, section 3(2) of the Dallas City Charter and City Council Resolution Nos. 79-0723, 90-4027, and 05-3305. You explain that the auditor is appointed by the city council and is responsible for conducting audits. You state that the information at issue consists of audit working papers pertaining to an audit of the Smirnoff Music Centre's lease payments. Based on your arguments and our review, we agree that Exhibit B constitutes audit working papers that may be withheld under section 552.116 of the Government Code.

Next, you claim the information you have highlighted in yellow in Exhibit F is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't § 552.117(a)(1). Whether a particular piece of information is protected under section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, to the extent

that the employees at issue made timely elections to keep their information confidential, then the city must withhold the yellow-highlighted information under section 552.117(a)(1) of the Government Code. However, if the employees at issue did not make timely elections to keep their information confidential, the city may not withhold this information under section 552.117(a)(1).

Next, we address your assertion that the information you have highlighted in pink in Exhibit F is excepted from disclosure under section 552.137 of the Government Code. Section 552.137 requires a governmental body to withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See* Gov't Code § 552.137(b). You do not inform us that the owners of the e-mail addresses at issue have affirmatively consented to their release. Therefore, the city must withhold the e-mail addresses you highlighted in pink in Exhibit F under section 552.137 of the Government Code.

In summary, the city may withhold Exhibit B under section 552.116 of the Government Code. To the extent that the employees at issue made timely elections to keep their information confidential, the city must withhold the information you have highlighted in yellow in Exhibit F under section 552.117(a)(1) of the Government Code. The city must withhold the pink-highlighted information in Exhibit F under section 552.137 of the Government Code. The remaining information 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 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). If the governmental body does not file suit over 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/jb

Ref: ID# 317314

Enc. Submitted documents

c: Mr. Brad Watson
WFAA-TV
606 Young Street
Dallas, Texas 75202
(w/o enclosures)

Mr. Dave Levinthal
The Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)