



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2008

Mr. Stan Springerley
Smith County Civil Attorney & Assistant District Attorney
Smith County
100 North Broadway, 4th Floor
Tyler, Texas 75702

OR2008-13665

Dear Mr. Springerley:

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#324127.

The Smith County Commissioner's Court (the "court") received a request for information relating to a specific proposed bond election. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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. You claim that section 551.072 of the Government Code applies in this instance to render the requested information confidential. Section 551.072 provides:

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.

A governmental body may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.

~~Gov't Code § 551.072. Section 551.072 authorizes governmental bodies to hold closed meetings related to property transactions. This provision does not address the confidentiality of records. Furthermore, the fact that a subject is discussed in an executive meeting does not make information related to that discussion confidential. Open Records Decision Nos. 605 (1992), 485 (1987). Because section 551.072 is not a confidentiality provision, the requested information may not be withheld on that basis.~~

You also raise section 552.101 in conjunction with section 551.076 of the Government Code. Section 551.076 provides that a governmental body is not required to conduct an open meeting to deliberate the deployment or implementation of security personnel or devices. You contend that an executive session will be necessary to "ensure that there are adequate security features for the new facility." Section 551.076, however, does not contain language that makes any of the information at issue expressly confidential, nor does it state that the information shall not be released to the public. Accordingly, we conclude that the requested information may not be withheld under section 551.076 of the Government Code. As you raise no further arguments against disclosure, the requested 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/jb

Ref: ID#324127

Enc. Submitted documents

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(w/o enclosures)