



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 25, 2009

Mr. Gary Henrichson  
Assistant City Attorney  
City of McAllen  
P.O. Box 220  
McAllen, Texas 78505-0220

OR2009-02475

Dear Mr. Henrichson:

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# 335840 (ORR# 08-1212).

The City of McAllen (the "city") received a request for the investigative reports and names of witnesses the city will use if the requestor appeals his termination of employment. You indicate the city has provided some of the requested information to the requestor. You claim the submitted report is excepted from disclosure under section 552.103 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

We note the submitted report is subject to section 552.022(a)(1) of the Government Code, which provides:

the following categories of information are public information and not excepted from required disclosure under [the Act] unless they are expressly confidential under other law:

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<sup>1</sup>Although you also claim the submitted information is excepted under section 552.305 of the Government Code, that provision is not an exception to disclosure. Rather, section 552.305 requires a governmental body to notify third parties whose proprietary interests may be implicated by a request for information of the request and of the parties' right to submit comments to this office explaining why the requested information should be withheld from disclosure. *See* Gov't Code § 552.305(d).

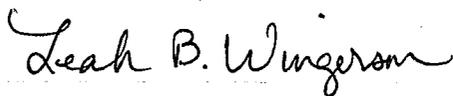
(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted report is part of a completed investigation, which must be released under section 552.022(a)(1), unless the information is excepted from disclosure under section 552.108 or expressly confidential under other law. Section 552.103 of the Government Code is a discretionary exception to public disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022. Therefore, the city may not withhold the submitted report under section 552.103 of the Government Code. As you have claimed no other exceptions to disclosure, the submitted report must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/cc

Ref: ID# 335840

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)