



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2009

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2009-09472

Dear Ms. Chang:

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# 348646.

The Houston Police Department (the "department") received a request for the listing of all Houston establishments that applied for and received Sexually-Oriented Business permits during a specified time period and any code sheets or lookup tables relating to this list.¹ You claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

¹We note that the department sought and received clarification of the request from the requestor. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²We 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.

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. You state that portions of the submitted information are subject to the decision in *N.W. Enterprises, Inc. v. City of Houston*, 352 F.3d 162 (5th Cir. 2003). The question in *N.W. Enterprises* was the constitutionality of an ordinance of the City of Houston that regulated sexually-oriented businesses and specified the personal information required of individuals applying for permits to work as managers or entertainers in such businesses. With regard to the required public disclosure under the Act of certain information provided by entertainers and managers in their permit applications, the district court in *N.W. Enterprises* concluded that:

there is meaningful potential danger to individuals working in sexually oriented businesses if the information in their permit applications is disclosed to the public. The Court concludes further that the potential for disclosure is likely to have a chilling effect on the applicants’ protected speech. These dangerous and chilling effects are sufficiently severe that the information should be held confidential by the city.

N.W. Enter., Inc. v. City of Houston, 27 F.Supp.2d 754, 843 (S.D. Tex.1998). In upholding the confidentiality determination of the district court, the United States Court of Appeals for the Fifth Circuit stated that “[b]ecause the district court declared the information on entertainer and manager permit applications confidential under the [Act], the City cannot disclose it to the public.” *N.W. Enter.*, 352 F.3d at 195. The appellate court also agreed that the entertainers’ and managers’ home addresses and telephone numbers were confidential. *Id.* Thus, pursuant to *N.W. Enterprises*, information revealing the identity of an entertainer or manager of a sexually-oriented business, including the entertainer’s or manager’s home address and telephone number, is generally confidential. You inform us that under city code the definition of the term “operator” includes “manager.” See HOUSTON, TEX., CODE OF ORDINANCES Ch. 28, art. III, § 28-121 (1997). Portions of the submitted information reveal the type of information protected in *N.W. Enterprises*. Therefore, this identifying information, which we have marked, must be withheld under section 552.101 in conjunction with the court’s holding in *N.W. Enterprises*. However, *N.W. Enterprises* did not address the confidentiality of the remaining information, including information that identifies business owners and business addresses. Therefore, that type of information is not confidential under the decision in *N.W. Enterprises* and may not be withheld on that basis under section 552.101.

Section 552.130 of the Government Code excepts from disclosure information relating to a Texas driver’s license. Gov’t Code § 552.130. Accordingly, the department must withhold the Texas driver’s license numbers we have marked under section 552.130 of the Government Code.

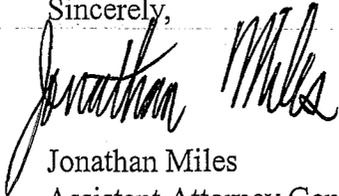
In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the court’s holding in *N.W.*

Enterprises. The department must also withhold the information we have marked under section 552.130 of the Government Code. The remaining information 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, 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,

A handwritten signature in black ink, appearing to read "Jonathan Miles". The signature is written in a cursive style with a large initial "J".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 348646

Enc. Submitted documents

c: Requestor
(w/o enclosures)