



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 22, 2012

Mr. Jason Cozza
Deputy City Clerk
City of Baytown
P.O. Box 424
Baytown, Texas 77522-0424

OR2012-04268

Dear Mr. Cozza:

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# 48946 (PIR # 3951).

The City of Baytown (the "city") received a request for a deposit document showing the date a specified check was deposited and a cancelled check pertaining to a specified invoice. You state you have provided some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under section 552.136 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from 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 the city did not comply with section 552.301 of the Government Code in requesting this decision. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). You inform us that the city received the

request on January 4, 2012. We understand the city was closed January 16, 2012. Thus, the city was required to submit the information required by section 552.301(e) by January 26, 2012. However, the city did not submit to this office comments explaining why the stated exception applies or the information requested until February 1, 2012. Consequently, we find that the city failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because you claim some of the submitted information is subject to section 552.136 of the Government Code and section 552.136 can provide a compelling reason for non-disclosure, we will address the applicability of this exception to the submitted information.

Next, we address the requestor's assertion the city possesses additional information responsive to the requested deposit documents. The city indicates it does not possess any additional responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed) (governmental body not required to disclose documents that did not exist when it received a request). Whether the city has additional information responsive to this portion of the request is a question of fact. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Accordingly, we must accept the city's representation that it has no additional responsive information that it has not already provided to this office. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information that the governmental body holds. *See* Open Records Decision No. 561 at 8-9 (1990). We assume the city has made a good-faith effort to do so.

You state the city will redact the information you have marked pursuant to section 552.136(c) of the Government Code. We note section 552.136(c) allows a governmental body to redact information that must be withheld under section 552.136(b) without requesting a decision from the attorney general. *See* Gov't Code § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general, and governmental body

withholding information pursuant to section 552.136(c) must provide certain notice to requestor). Section 552.136(b) provides “[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.” *Id.* § 552.136(b). We note check numbers are not access device numbers for purposes of section 552.136. Accordingly, the city may not withhold the check numbers it has marked under section 552.136. Further, we find the city has failed to demonstrate some of the other information it has marked constitutes an access device number for purposes of section 552.136. Therefore the city may not withhold this information, which we have marked for release, under section 552.136. However, we find the remaining information you have marked is subject to section 552.136. Accordingly, except for the information we have marked for release, the city must withhold the information you have marked under section 552.136 of the Government Code. The remaining information must be released to the requestor.

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, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/som

Ref: ID# 448946

Enc. Submitted documents

c: Requestor
(w/o enclosures)