



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 15, 2013

Mr. Charlie E. Zech  
Counsel for the City of Cibolo  
Denton, Navarro, Rocha & Bernal, P.C.  
2517 North Main Avenue  
San Antonio, Texas 78212-4685

OR2013-06116

Dear Mr. Zech:

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# 484087.

The City of Cibolo (the "city"), which you represent, received a request for forty-two categories of information pertaining to the annexation of property owned by the requestor, the city's regulations governing signs, and three specified cause numbers. You claim the submitted information is not subject to the Act. We have considered your argument and reviewed the submitted representative sample of information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, the requestor informs us most of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2011-00397 (2011). In this prior ruling, we ruled the city may generally withhold the submitted e-mails and attachments you marked under section 552.107(1) of the Government Code, but may not withhold the non-privileged letter we marked if it exists separate and apart from the privileged e-mail to which it is attached. We also ruled with the exception of the citations we marked, the city may withhold the information you marked under section 552.108(a)(1) of the Government Code and must release the remaining information. As we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based, we conclude the city may rely on Open Records Letter No. 2011-00397 as a previous determination and withhold or release any previously ruled upon information in accordance with it. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information

as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note you have only submitted information responsive to category forty-one of the request for information, which seeks information pertaining to three specified cause numbers. Although you state the city has submitted a representative sample of information, the submitted information is not representative of information responsive to the remaining categories of the present request. This open records letter ruling is applicable only to the types of information you have submitted for our review. *See* Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988). To the extent the responsive information is not subject to Open Records Letter No. 2011-00397, this ruling does not authorize the city to withhold any types of information that are substantially different from the types of information the city has submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Thus, to the extent any information responsive to the remaining categories of the request is not subject to Open Records Letter No. 2011-00397 and existed when the city received the request, we assume the city has released any such information. If not, then the city must do so immediately. *See id.* §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

We next address the requestor's argument the city failed to comply with the Act's procedural requirements under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e) of the Government Code, the 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 state the city received the request for information from the requestor on January 10, 2013. You inform us the city sought clarification of portions of the request from the requestor on January 15, 2013, and the requestor responded to this request for clarification on January 28, 2013. *See id.* § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request). You also inform us February 18, 2013, was a holiday for the city. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. We have no indication the city did not act in good faith in seeking clarification of the request. Accordingly, based on the submitted documentation, the city's ten- and fifteen-business-day periods under sections 552.301(b) and 552.301(e) for requesting this decision commenced on January 28, 2013, the date of the city's receipt of the requestor's response to the request for clarification. *See City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling

is measured from date request is clarified or narrowed). Consequently, the city's ten-business-day deadline was February 11, 2013, and its fifteen-business-day deadline was February 19, 2013. We note the city's request for a ruling was submitted in an envelope meter-marked on February 5, 2013, and the city submitted the information required by section 552.301(e) in an envelope meter-marked on February 19, 2013. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the city timely complied with the procedural requirements mandated by section 552.301 of the Government Code with respect to the submitted information.

You assert the information at issue consists of records of the judiciary. The Act is applicable to information "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." *See id.* § 552.002(a)(1). However, the Act's definition of "governmental body" "does not include the judiciary." *Id.* § 552.003(1)(B). Information "collected, assembled, or maintained by or for the judiciary" is not subject to the Act but instead is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov't Code § 552.003(1)(B) prior to enactment of Gov't Code § 552.0035). Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ); Open Records Decision No. 646 at 4 (1996) ("The function that a governmental entity performs determines whether the entity falls within the judiciary exception to the . . . Act."). We understand you to assert the information at issue is maintained by the city as an agent of the judiciary. Accordingly, if this information is maintained solely by the city as an agent of the judiciary, we agree it consists of records of the judiciary that are not subject to release under the Act, and need not be released in response to this request. However, to the extent the information at issue is not maintained by the city as an agent of the judiciary, it is subject to the Act. In that case, we note portions of this information are subject to section 552.136 of the Government Code.<sup>1</sup> Accordingly, we will address the applicability of this section to the information at issue.

Section 552.136 of the Government Code provides in part that "[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." Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). Accordingly, the city must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code.

In summary, the city may rely on Open Records Letter No. 2011-00397 as a previous determination and withhold or release any previously ruled upon information in accordance with that ruling. If the information at issue is maintained solely by the city as an agent of the

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

judiciary, it need not be released in response to this request. However, to the extent the information at issue is not maintained by the city as an agent of the judiciary, it is subject to the Act. In that case, the city must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code and must release the remaining information at issue.<sup>2</sup>

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, toll free at (888) 672-6787.

Sincerely,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/bhf

Ref: ID# 484087

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the information being released contains the requestor's driver's license information which is generally confidential under section 552.130 of the Government Code. However, because section 552.130 protects personal privacy, the requestor has a right to his own information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987). We note section 552.130(c) authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Thus, if the city receives another request for this same information from a person who does not have such a right of access, section 552.130(c) authorizes the city to redact the driver's license information at issue.