



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2014

Mr. C. Robert Heath
Counsel for City of McAllen
Bickerstaff Heath Delgado Acosta, L.L.P.
3711 South MoPac Expressway, Building One, Suite 300
Austin, Texas 78746

OR2014-19835

Dear Mr. Heath:

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# 542063 (File No. WO16258-082714).

The City of McAllen (the "city"), which you represent, received multiple requests from the same requestor for information pertaining to a specified investigation, a specified report, and a specified document. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.116 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

We note the purpose of the Act is to prescribe conditions under which members of the general public can obtain information from a governmental body. *See* Attorney General Opinion JM-119 (1983) (statutory predecessor). An official of a governmental body who, in an official capacity, requests information held by the governmental body is not acting as a member of the public in doing so. *Id.* In such a case, the Act is not implicated, and the governmental body must determine, based on its own policies and procedures, whether the requesting official may access the requested information. Generally, a governmental body's decision to allow information to be circulated within the governmental body would not constitute a release to the public. Thus, internal circulation of information generally will not

¹Although you also raise section 552.101 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

violate confidentiality protections or waive exceptions to public disclosure.² In sum, when a governmental official is acting in his official capacity, the Act does not control the official's right of access to information maintained by the governmental body. *See id.* at 3 (member of community college district board of trustees, acting in official capacity, has an inherent right of access to information maintained by district).

In this instance, the requestor states, and you agree, he is a city commissioner. The requestor states, and you acknowledge, he was acting in his official capacity in requesting the specified responsive documents. Therefore, we find the present request is not a request by a member of the public under the Act, and we determine that the city may not withhold the requested information from the requestor pursuant to the Act's exceptions to required public disclosure. *See id.*; *see also id.* JC-120 at 5 (1999) (governmental body may adopt procedure for review of certified agenda or tape recording of closed meeting, but may not absolutely prohibit review by member, even if member did not attend meeting). The internal procedures of the city for releasing information to city officials govern whether a city commissioner, acting in his official capacity, may access information held by the city. This office cannot resolve an internal dispute about document-management policy that may exist within the city.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

²Particular confidentiality provisions in the law may contain restrictions on internal circulation of confidential information. When such provisions apply, a governmental body should ensure its internal procedures comply with any such restrictions.

Ref: ID# 542063

Enc. Submitted documents

c: Requestor
(w/o enclosures)