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THE TEXAS MUNICIPAL LAWYER™

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OPEN RECORDS DETERMINATIONS

On December 14, 2009, the Texas Attorney General (AG) released Open Records Decision No. 684, which gives cities more flexibility under the Texas Public Information Act (PIA). The decision constitutes a previous determination by the AG that automatically allows cities to withhold certain categories of requested data without first seeking an AG ruling.



The categories are: (1) Direct deposit authorization forms; (2) Eligibility verification form I-9;

(3) W-2 and W-4 forms (tax return information which includes any information gathered by the IRS); (4) Certified agendas and tapes of closed meetings; (5) Fingerprints; (6) L-2 and L-3 declarations; (7) Motor vehicle record information (does not apply to out of state motor vehicle record information); (8) Access device information (including insurance policy numbers, bank account numbers, bank routing numbers, credit card numbers, debit card numbers, and charge card numbers); (9) E-Mail addresses; and (10) any Military

discharge records that was first recorded with or that otherwise first comes into the possession of a city on or after September 1, 2003.

ORD 684 also clarified that certain exceptions do not apply in specific situations. For example, the standard PIA exceptions do not apply when a person seeks access to information that relates to that particular person and the privacy laws are designed to protect that person. The city may however, deny access to information to that person about that person based on other Texas Government Code sections that allow for denial of disclosure but are not designed to protect the privacy of the individual. Additionally, certain exceptions do not apply when the protection of the exception lapses due to the death of the individual whose privacy the exception protects. This is so because the right of privacy is purely personal and expires upon the death of the person whose privacy is invaded.

OPTING OUT OF PRECLEARANCE

Last summer, the U.S. Supreme Court upheld the authority of an Austin-area Municipal Utility District (a “MUD”) to opt-out of the Preclearance requirements under the federal Voting Rights Act of

1964 (the “Act”). The court held that the Act allows all political subdivisions (e.g., MUDs, cities) to opt-out from the preclearance requirements in certain situations.

In order for a political subdivision to bailout, it must seek a declaratory judgment from a 3-judge District Court in D.C. In the suit, the political subdivision must show that during the previous 10 years:

- No test or device has been used within the political subdivision for the purpose or with the effect of denying or abridging the right to vote on account of race or color;

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EDUCATIONAL OPPORTUNITIES

- “Open Government and the Net” (*Texas Tech Administrative Law Journal*, Published Fall 2009) by Alan J. Bojorquez and Damien Shores is now live on TexasMunicipalLawyers.com
- **March 24-26, 2010:** Alan speaks on both *Zoning Procedures* and *Tree Preservation* at the University of Texas School of Law’s annual **Land Use Conference** in Austin, Texas

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Opting Out of Preclearance

- No final judgment of any court of the U.S. has determined that denials or abridgments to the right to vote on account of race or color have occurred anywhere in the political subdivision;
- No Federal examiners or observers have been assigned to the political subdivision;
- The political subdivision has fully complied with Section 5 of the Act; and
- The U.S. Department of Justice (the “DOJ”) has not interposed any objection and no declaratory judgment has been denied under Section 5.

In addition, evidence of the following must also be presented by a political subdivision seeking a bailout:

- The political subdivision must have eliminated voting procedures and methods of election which inhibit or dilute equal access to the electoral process;
- The political subdivision must have been engaged in constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under the Act; and
- The political subdivision has engaged in other constructive efforts, such as expanded op-

portunity for convenient registration and voting for every person of voting age and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process.

The DOJ may consent to entry of judgment in favor of bailout if the evidence warrants it, though other interested parties are also provided the opportunity to intervene in the matter.

CLIENT NEWS

Dripping Springs, Texas—Fox News “Good Morning Austin” did a really nice story on Dripping Springs on February 4, 2010. Mayor Purcell talks about the city’s history and their goals for the future. It is located at: www.myfoxaustin.com/dpp/good_day/020410-Around-the-City-Dripping-Springs

Eden, Texas—Eden was featured on The Learning Channel’s (TLC’s) new reality series called “The Imploders”. The crew im-



ploded the old feed mill in town. TLC also helped the community by removing an old antenna in a residential neighborhood, holding an assembly for the school, and removing dilapidated grain storage tanks.

Check out the video on Eden’s website: www.edentexas.com/articles/view/implosion-video-4b58d2d7-e6a0-4fbf-a007-54acac100a92

INTEGRITY AT CITY HALL

Q: Can someone seeking approval from the city meet with council members individually to convey information, build consensus, and gain support?

A: Yes. Lobbying council members privately does not violate the Open Meetings Act provided the lobbyist acts independently of city officials. See Op. Tex. Att’y Gen. No. JC-0307 (2000). Some cities require paid advocates to register and disclose their activities.

ABOUT THE FIRM

Congratulations to associate Jill Hoffman for completing the 19th Annual Austin Marathon on Sunday, February 14, 2010!! Wow!

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