



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 27, 2007

Ms. Lisa Morris
Records Manager
The Woodlands Community Association, Inc.
2201 Lake Woodlands Drive
The Woodlands, Texas 77380-1118

Re: Open Records Complaint No. 278864-07

Dear Ms. Morris:

The Office of the Attorney General has received a complaint from Mr. Foster McNair alleging that the Woodlands Community Association ("WCA") has failed to respond appropriately to a request for information dated February 16, 2007. I have enclosed a copy of the complaint with this letter.

The Texas Public Information Act (the "Act"), chapter 552 of the Texas Government Code, requires governmental bodies and other entities subject to the Act to release requested information or to request a ruling from this office as to the applicability of exceptions to disclosure under the Act. Our records do not indicate that the WCA has requested an attorney general's decision seeking to withhold the requested information in accordance with section 552.301 of the Act.

In response to Mr. McNair's request, you stated to him by letter dated March 2, 2007, that "[e]xecutive sessions are closed meetings not subject to disclosure." Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The Open Meetings Act ("OMA"), which establishes the general rule that every meeting of every governmental body shall be open to the public, permits closed meetings for certain purposes. A governmental body that conducts a closed meeting must either keep a certified agenda or make a tape recording of the proceeding, except for private attorney consultations. Gov't Code § 551.103. However, records discussed or created in a closed meeting, other than a certified agenda or tape

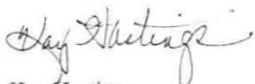
Ms. Lisa Morris - Page 2

recording, are not made confidential by chapter 551 of the Government Code. The mere fact that a document was discussed in an executive session does not make it confidential under the Act. *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 367 (Tex. 2000); Open Records Decision Nos. 605 at 2-3 (1992) (concluding that section 551.074 does not authorize a governmental body to withhold its records of the names of applicants for public employment who were discussed in an executive session), 485 at 9-10 (1987) (investigative report not excepted from disclosure under statutory predecessor to section 552.101 simply by virtue of its having been considered in executive session); *see also* Attorney General Opinion JM-1071 at 3 (1989) (statutory predecessor to section 551.146 did not prohibit members of governmental body or other individuals in attendance at executive session from making public statements about subject matter of executive session); *see also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 649 at 3 (1996) (language of confidentiality provision controls scope of its protection), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public). Thus, the information responsive to Mr. McNair's request in this case may not be withheld from required public disclosure under section 552.101 of the Government Code in conjunction with the Open Meetings Act.

Chapter 552 makes the Texas Attorney General responsible for enforcing the statute. Although our office takes that responsibility seriously, we prefer to work with the parties to try and resolve complaints informally if at all possible. The easiest way to resolve this open records complaint is to release the requested information, provided that the requested information is not confidential by law.

We would appreciate your help in resolving this complaint as soon as possible. Should you wish to reach me by telephone, my number is 512.463.9919.

Sincerely,



Kay Hastings
Assistant Attorney General
Open Records Division

Enc.

- c. Mr. Foster McNair
[REDACTED]
The Woodlands, Texas 77381
(w/o enclosures)