



February 11, 2000

Mr. John F. Nance
Assistant City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2000-0500

Dear Mr. Nance:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 132230.

The City of El Paso received a request for copies of all documents relating to the training regimen, discipline or punishment of "Sissy," an elephant at the El Paso Zoo, from November 1998 through the present. You claim that all of the requested information is related to potential litigation and may be withheld pursuant to section 552.103 of the Government Code. You further claim exceptions under sections 552.107 and 552.108. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.301 of the Government Code requires a governmental body to release requested information or to request a decision from the Attorney General within 10 business days of receiving a request for information. The City of El Paso received the request for information on November 29, 1999. You did not request a decision from this office until December 15, 1999. Consequently, you failed to request a decision within the 10 business days required by section 552.301(b) of the Texas Government Code.

In addition, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. In the instant case, your fifteen day deadline was December 20, 1999. This office did not receive a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents until December 21, 1999. Therefore, you have also failed to meet the requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not shown such a compelling interest to overcome the presumption that the information at issue is public. You assert that the documents are excepted from disclosure by sections 552.103, 552.107, and 552.108 of the Government Code. These sections constitute permissive exceptions which do not make the information confidential by law and may be waived.¹ Accordingly, you must release the requested information. We caution that the distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should

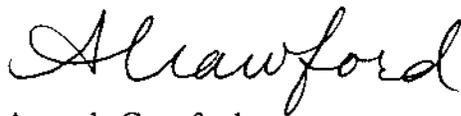
¹See Open Records Decision No. 630 (1994) (a governmental body may waive section 552.107(1) if it fails to timely request an open records decision).

report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "A Crawford".

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/cwt

Ref: ID# 132230

Encl. Submitted documents

cc: Mr. Donald L. Kirkpatrick
6945 Alto Rey Avenue
El Paso, Texas 79912-3015
(w/o enclosures)