



August 7, 2000

Ms. Anita Stevenson  
Assistant City Attorney  
City of Austin  
P.O. Box 1546  
Austin, Texas 78767-1546

OR2000-2966

Dear Ms. Stevenson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138003.

The City of Austin (the "city") received a request for all documentation in reference to the investigation of complaints filed by two police officers employed by the city's Parks and Recreation Department. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.117 of the Government Code. We have considered the exception you claim and reviewed the representative samples of information.<sup>1</sup>

Pursuant to section 552.301(e)(1), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) 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. Gov't Code § 552.301(e)(1)(A)-(D). The city received the request on May 30, 2000 and, therefore,

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

had until June 20, 2000 to submit a copy of the requested information. You submitted the information with a cover letter dated June 21, 2000. Further, the cover letter reflects that the information was received by this office on June 21, 2000. The submitted information does not bear a post office cancellation mark nor do you furnish satisfactory proof that the information was deposited in the mail on June 20, 2000. *See Gov't Code § 552.308*. Thus, you have failed to comply with section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301(e) results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See Gov't Code § 552.302; 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 assert that the requested information is excepted from required disclosure pursuant to section 552.103 of the Government Code. Section 552.103 does not provide a compelling reason sufficient to overcome the presumption that the information is public. *See Open Records Decision No. 551 (1990)* (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation, and does not itself make information confidential). You have also asserted that section 552.117 excepts information from disclosure. This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law or implicates the privacy interest of a third party. *See Open Records Decision No. 150 (1977)* (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Thus, we will address the applicability of section 552.117 to the information at issue.

Section 552.117(2) excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members regardless of whether the peace officer complied with section 552.024 of the Government Code. Thus, you must withhold the home address, home telephone number, social security number, and information regarding family membership under section 552.117(2) of the Government Code.

Further, the submitted information contains allegations of sexual harassment. Section 552.101 of the Government Code excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. Information must be withheld under section 552.101 in conjunction with the common law right to privacy if (1) the information contains highly intimate or embarrassing facts about a person's private affairs such that release of the information would be highly objectionable to a reasonable person, and (2) the information is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court found that a governmental body must withhold

the identities of alleged victims and witnesses to alleged sexual harassment as well as any information which would tend to identify a witness or victim based on common law privacy. Therefore, we conclude, that under common law privacy and the holding in *Morales v. Ellen*, you must withhold the name of the alleged victim of sexual harassment. We have marked the information which you must withhold.

In conclusion, you must withhold the victim's identity and the information excepted under section 552.117(2). You must release the remaining information.

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 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 black ink that reads "Jennifer Bialek". The signature is written in a cursive style with a large initial "J".

Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB\ljp

Ref: ID# 138003

Encl: Marked documents

cc: Mr. Mike Wilkes  
603 East Applegate Drive  
Austin, Texas 78753  
(w/o enclosures)