



September 15, 2000

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2000-3559

Dear Ms. Sims:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139069.

The City of Lubbock (the "city") received a request for all policies and procedures regarding off-duty work by police officers. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted. We also received and have reviewed the requestor's letter to this office dated July 21, 2000.

In raising section 552.103, the "litigation exception," you claim that the requested information relates to anticipated litigation. We note, however, that section 552.022(a) of the Government Code requires the city to release the requested information. Section 552.022(a) provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(13) a policy statement or interpretation that has been adopted or issued by an agency[.]

Gov't Code § 552.022(a)(13). Upon review of the requested information, we find that it constitutes an official policy statement regarding off-duty employment of police officers. Therefore, the requested information is subject to required public disclosure under

section 552.022(a)(13) unless other law expressly makes the information confidential. Section 552.103 of the Government Code is a discretionary exception to public disclosure that protects the interests of the governmental body. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.--Dallas 1999, no pet.) (discussion of section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not "other law," for the purposes of section 552.022(a), that makes information expressly confidential. Accordingly, information that is subject to required disclosure under section 552.022(a) may not be withheld under section 552.103. Although you raise section 552.101 of the Government Code, you have not directed our attention to any other law that provides for the confidentiality of the requested information. *See Gov't Code § 552.301(e)(1)(A)*. Therefore, the requested information must be released.

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).

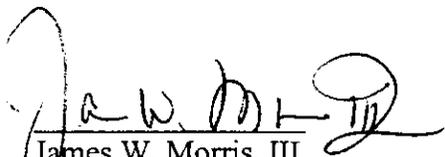
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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, appearing to read 'J.W. Morris, III', written over a horizontal line.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 139069

Encl. Submitted documents

cc: Mr. W. Andrew Messer
Fletcher & Springer, L.L.P.
9400 North Central Expressway, 14th Floor
Dallas, Texas 75231
(w/o enclosures)