



November 17, 2000

Mr. James Minor
City Administrator
City of Keene
100 North Mockingbird
Keene, Texas 76059-2323

OR2000-4439

Dear Mr. Minor:

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# 141382.

The City of Keene (the "city") purportedly received a request for "[t]he income amount reported in Box 1 on the 1999 W-2 forms for the top 15 employees of the City of Keene." You state that the city has "some concerns due to the wording of the request," but you otherwise do not claim any exceptions to disclosure of the information.

You have failed to comply with the procedures required by section 552.301 of the Government Code for asking for an attorney general decision. Subsections 552.301(a) and (b) provide:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.
- (b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

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 (1) general 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. You have not submitted a copy of the written request for information, a signed statement as to the date the city received the request for information, arguments as to why the requested information falls under an exception to required disclosure, or a copy of the requested information at issue. Therefore, you have failed to comply with the requirements dictated by section 552.301.

Because you have failed to comply with section 552.301, the requested information is presumed to be public information. Gov't Code § 552.302. In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); see Open Records Decision No. 630 (1994). You have not shown such a compelling reason to overcome the presumption that the information at issue is public. Moreover, because you have submitted neither a copy of the written request for information nor a copy of the requested information, we have no basis for finding that a compelling reason exists. Accordingly, you must release the requested information to the requestor. We caution that the distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352.

In order to provide guidance for future requests for decisions, we have enclosed this office's Public Information Handbook. In addition, we encourage you to call our office's toll-free hotline at (877) 673-6839 and visit our web site at www.oag.state.tx.us for additional guidance.

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,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF/er

Ref: ID# 141382

Encl: 2000 Public Information Handbook

cc: Requestor
c/o James Minor
City Administrator
City of Keene
100 North Mockingbird
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