



November 20, 2000

Ms. Kathleen F. Watel
Assistant City Attorney
City of San Antonio
P. O. Box 839966
San Antonio, Texas 78283-3966

OR2000-4459

Dear Ms. Watel

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142756.

The City of San Antonio (the "city") received a request for information pertaining to a specific intersection. Specifically, the requestor seeks all records regarding the sequencing and timing of the stop lights used at the intersection, and all records regarding the number of traffic accidents that have occurred there. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, the governmental body, "no later than the 15th business day after the date of receiving the written request," must submit to the attorney general "a copy of the specific information requested." Gov't Code § 552.301(e)(1)(B). If the governmental body fails to submit the requested information, it "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302.

You state that the office received the request for information on October 5, 2000. Accordingly, the city's deadline for submitting the information at issue to this office, expired fifteen business days later on October 26, 2000. *See* Gov't Code § 552.301(e)(1)(B). However, as of the date of this letter-ruling, this office has yet to receive a copy of the requested information. Therefore, the city has missed its fifteen-day deadline as prescribed by section 552.301. Consequently, absent a compelling reason to withhold the requested information, the information must be released.

This office has held that a compelling reason exists to withhold information when the information is confidential by law. *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). You argue that the submitted information is excepted under sections 552.103 of the Government Code. However, section 552.103 is a discretionary exception under the Public Information Act and not a confidentiality provision. *See* Open Records Decision No. 473 at 2 (1987) (discretionary exceptions under the Public Information Act can be waived). Therefore, your argument concerning section 552.103 does not provide a compelling reason to withhold the requested information. Therefore, pursuant to section 552.302, the city must release the requested information to the requestor.

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).

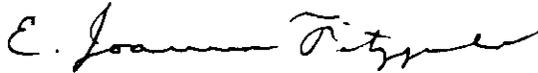
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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\seg

Ref: ID# 142756

Encl: Submitted documents

cc: Ms. Barbara L. Quirk
Jones Kurth & Andrews
10100 Reunion Place, Suite 600
San Antonio, Texas 78216
(w/o enclosures)