



December 27, 2000

Ms. Zandra L. Navaez
Legal Services Division
City Public Service
P.O. Box 1771
San Antonio, Texas 78296-1771

OR2000-4850

Dear Ms. Navaez:

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# 142626.

The City of San Antonio (the "city") received a request for a complete copy of the file made in connection with a specified automobile accident. You claim that the 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 "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." Gov't Code § 552.301. Otherwise, the requested information is presumed to be public information. Gov't Code § 552.302. You state that the city received the request for information on October 4, 2000. Accordingly, the city's deadline for requesting an attorney general decision in regard to this request for information expired ten business days later on October 18, 2000. *See id.* § 552.301. However, the faxed copy of the city's request for an attorney general decision indicates that it was sent via facsimile to this office on October 19, 2000. Furthermore, the postmark on the mailed copy of the city's request for an attorney general decision indicates that it was mailed to this office on October 19, 2000. Therefore, the city missed its ten-day deadline. Consequently, absent a compelling reason to withhold the information, the requested records must be released.

This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law or affects third party interests. *See* Open Records Decision No. 150 (1977). You argue that the submitted information is excepted under section 552.103 and 552.107 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 sections 552.103 does not provide a compelling reason to withhold the submitted information. Moreover, having reviewed the submitted information, we find that no compelling reason exists to overcome the presumption of openness. *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). Therefore, the city must release the submitted 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).

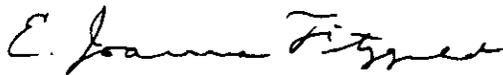
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

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 Hadassah Schloss at 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# 142626

Encl: Submitted documents

cc: Mr. R. Gary Stephens
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(w/o enclosures)