Office of the Attorney General · State of Texas
JOHN CORNYN

December 29, 2000

Mr. John D. Lestock
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2000-4902

Dear Mr. Lestock:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142957.

The City of Waco (the "city") received a request for the birth record of a specified individual. You claim that the requested information is excepted from disclosure under section 552.115 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.115 of the Government Code provides in pertinent part:

> (a) A birth or death record maintained by the *bureau of vital statistics of the Texas Department of Health or a local registration official* is excepted from [required disclosure], except that:
>
> . . .
>
> (2) a birth record is public information and available to the public on and after the 50th anniversary of the date of birth as shown on the record filed with the bureau of vital statistics or local registration official[.]

(emphasis added). After reviewing the submitted birth certificate, it appears that the birth certificate may be maintained by a local registration official. Further, the 50th anniversary of the date of birth has not yet occurred. Therefore, if the birth certificate is maintained by a local registration official, the city must withhold the birth certificate under section 552.115 of the Government Code.

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).

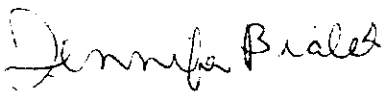
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JHB/er

Ref: ID# 142957

Encl: Submitted documents

cc: Ms. Angela Eaton
1544 Sheridan Road
El Paso, Texas 79906
(w/o enclosures)