



April 25, 2001

Ms. Leah Simon Clark  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2001-1652

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146437.

The City of Waco Police Department (the "department") received a request for all disciplinary reports for a specified police officer. You state that you have released 112 pages of records. You claim that the remaining requested information is excepted from disclosure under sections 552.108 and 552.117 of the Government Code as well as section 143.089(g) of the Government Code. We have considered the exceptions you claim and reviewed your arguments.

You claim that the address of a police officer that was redacted from the requested information prior to its release is excepted under section 552.117(2) of the Government Code. Section 552.117(2) provides that information that relates to the home address, home telephone number, social security number, or family member information of a peace officer as defined in article 2.12 of the Texas Code of Criminal Procedure must be withheld regardless of whether the officer complied with section 552.024 of the Government Code. Accordingly, we agree that you must withhold the officer's home address. In Open Records Decision No. 670 (2001), this office concluded that a governmental body may withhold under section 552.117(2) of the Government Code, the home address, home telephone number, personal cellular phone number, personal pager number, social security number, and family member information of a "peace officer" as set forth in article 2.12 of the Texas Code of Criminal Procedure without requesting a decision from this office. Therefore, you may withhold section 552.117(2) information from all of the responsive information.

You state that the city is not permitted to release the information contained in the department personnel file to this office. Pursuant to section 552.301(e)(1), a governmental body is required to submit to this office within fifteen business days of receiving an open records

request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(D); *see also* Gov't Code §§ 552.3035 (prohibiting attorney general from disclosing information submitted under section 552.301(e)(1)(D)). Although you have enclosed copies of the information in the personnel file of the Director of Civil Service which appears to be the 112 pages that have been released to the requestor, you did not submit to this office copies of the requested information that you wish to withhold from disclosure. Accordingly, you failed to request a decision in accordance with section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301(e) results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not submitted the information that you wish to withhold, so we have no basis for finding it confidential. Thus, we have no choice but to order the information released per section 552.302. However, you may withhold section 552.117(2) information in accordance with Open Records Decision No. 670 (2001). If you believe the remaining information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

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/tr

Ref: ID# 146437

Encl.: Submitted documents

cc: Mr. Brian Gaar  
*Waco Tribune-Herald*  
900 Franklin Avenue  
Waco, Texas 76702  
(w/o enclosures)