



April 27, 2001

Ms. Judith A. Hunter
Paralegal
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR2001-1730

Dear Ms. Hunter:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146498.

The City of Georgetown (the "city") received a written request for all records pertaining to the requestor's complaint against a city police officer. You have submitted to our office as responsive to the request the final report of a "Professional Standards Investigation." Additionally, you inform us that an audio tape recording is also responsive to the request.¹ You contend that the requested information is excepted from disclosure under section 552.103 of the Government Code.

We note at the outset that the city received a prior request from the same individual for the same records that are at issue here. The city received the prior request on January 24, 2001. You first sought a decision from this office on February 21, 2001. We therefore conclude that you requested a decision from this office more than ten business days following the city's receipt of the first records request.

Section 552.301(a) of the Government Code requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold unless there has been a previous determination that the requested information is excepted from required public disclosure. When a governmental body fails to comply with the requirements

¹It appears that the audiotape is incorporated by reference into the investigation report.

of section 552.301, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. Gov't Code § 552.302; *see also Hancock*, 797 S.W.2d at 381.

A compelling reason for withholding information is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Records Decision No. 150 (1977). Section 552.103 of the Government Code is a discretionary exception and not "other law" for purposes of section 552.022(a).² Moreover, we know of no other law that would make the requested information confidential. Consequently, the city may not withhold the information at issue pursuant to section 552.103 of the Government Code. *See also* Gov't Code § 552.022(a)(1) (explicitly making public "a completed report, audit, evaluation, or investigation" except as provided in Government Code section 552.108). The city must release the requested information, including the audio tape recording, in its entirety.

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

²Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding), 549 at 6 (1990) (governmental body may waive informer's privilege), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions therefore do not constitute "other law" that makes information confidential.

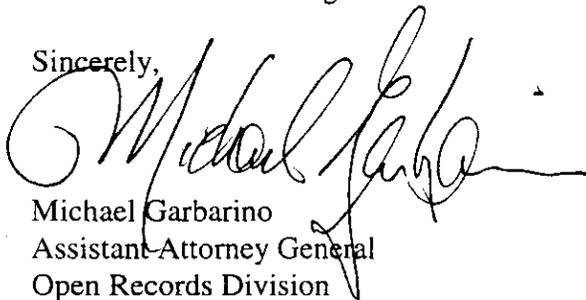
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/RWP/seg

Ref: ID# 146498

Encl. Submitted documents

cc: Mr. Dulal Talukdar
29012 Bay Hill Court
Georgetown, Texas 78628
(w/o enclosures)