



June 26, 2001

Ms. Sharon E. Hicks  
City Attorney  
City of Abilene  
P.O. Box 60  
Abilene, Texas 79604

OR2001-2738

Dear Ms. Hicks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148764.

The City of Abilene (the "city") received a request for several categories of documentation related to a contract between the City of Abilene Housing Authority ("AHA") and the requestor. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered your arguments. We have also considered the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may make comments stating why information should or should not be released).

Section 552.301 clearly states that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request for information. The submitted information indicates that the city received the request for information on October 3, 2000. The city did not request a decision from this office until April 23, 2001, more than six months after the city received the written request for information. Therefore, we conclude that the city failed to meet its ten business day deadline under section 552.301(b) of the Government Code for requesting a decision from this office.

Because the city failed to request a decision within ten business days of receiving this request for information, the information at issue is presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The city must demonstrate a compelling interest to withhold the information to overcome this presumption. *See id.*

Normally, a compelling interest is that some other source of law makes the information confidential or that release implicates a third party's interests. *See* Open Records Decision No. 150 at 2 (1977). You claim that the requested information is excepted from disclosure pursuant to section 552.103 of the Government Code. However, section 552.103 is a discretionary exception under the Public Information Act that does not constitute a compelling interest sufficient to withhold information from the public.<sup>1</sup> You also argue that the release of the information would harm a third party's interests. However, we find that you have not adequately demonstrated that a third party's interests are at stake.<sup>2</sup> *But see* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108). Furthermore, because you did not submit a copy of the requested information for our review, we have no basis for concluding that any of the information is otherwise confidential by law. Accordingly, we conclude that you must release the requested 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;

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<sup>1</sup>Discretionary 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. 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).

<sup>2</sup>This office received via facsimile and by first-class mail correspondence from you stating that you were enclosing a letter from the Department of Housing and Urban Development ("HUD") asking the city not to release the requested information. The letter from HUD was never submitted by the city.

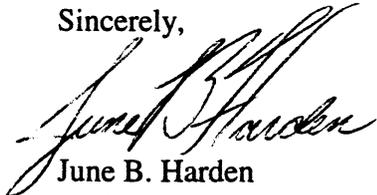
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things 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,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/RJB/seg

Ref: ID# 148764

c: Mr. Gene Duke  
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