



November 12, 2001

Ms. Gretchen Black
Assistant City Manager
City of Leon Valley
6400 El Verde Road
Leon Valley, Texas 78238

OR2001-5209

Dear Ms. Black:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154766.

The Leon Valley Police Department (the "department") received a request for several categories of information pertaining to the department and to the police department of Helotes, Texas, during a certain date and time period. You inform us of your belief that most of the requested information is public, and submit an audiotape for our review that you assert is responsive to a single category of the request. To the extent that the department possesses information other than the submitted audiotape that is responsive to the request, we assume that you have released such information to the requestor. If not, the department must do so at this time. *See* Gov't Code §§ 552.006, .301(a), .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). We have reviewed the submitted information.

Pursuant to section 552.301(b), a governmental body must ask for an attorney general decision and state the exceptions that apply no later than the tenth business day after the date of receiving the written request. The instant request is dated August 15, 2001, which is the sole evidence before us of when the department received the request. *See* Gov't Code § 552.301(e)(1)(C). The department requested a decision from this office by a letter postmarked September 7, 2001, which is the sixteenth business day following the date of the request.¹ *See id.* § 552.308 (concerning timeliness of action by United States or interagency mail). Further, the department's request for a decision fails to specify any exceptions to

¹This reckoning takes into account the Labor Day holiday on Monday, September 3, 2001.

required public disclosure that might apply to the submitted audiotape. Additionally, the department failed to provide either a signed statement or evidence sufficient to establish the date on which the request was received. *See id.* § 552.301(e)(1)(C). Thus, the department failed to request a decision as provided by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 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). The department has failed to demonstrate a compelling reason to overcome the section 552.302 presumption that the submitted audiotape is public. Therefore, pursuant to section 552.302, the submitted audiotape must be released to the requestor.

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).

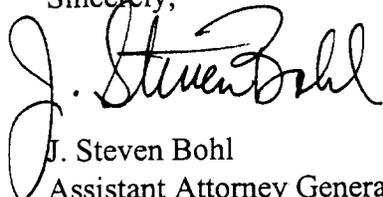
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/sdk

Ref: ID# 154376

Enc: Submitted documents

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(w/o enclosures)