



November 15, 2001

Ms. Cynthia B. Garcia
Assistant City Attorney
City of Fort Worth
100 Throckmorton Street
Fort Worth, Texas 76102

OR2001-5291

Dear Ms. Garcia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154964.

The City of Fort Worth (the "city") received a request for six categories of information relating to two separate incidents involving a named city employee. You advise that the city is releasing what it believes to be public information. In your initial letter to this office, you claim that certain other requested information, labeled as Exhibit C, is excepted from required public disclosure under sections 552.103 and 552.107 of the Government Code. In your letter dated September 21, however, only section 552.103 is claimed. Therefore, you have waived any claim of exception from disclosure under section 552.107 of the Government Code. Gov't Code §§ .301, .302.

As an initial matter, we note that pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, timely submit to this office written comments stating the reasons why the exception that you raised would allow the information to be withheld. In addition, you have failed to timely submit the information responsive to the request. You

have submitted a signed statement advising that the city received the request on August 29, 2001. As a result, the city's fifteen day deadline for submitting the information required under section 552.301(e) was September 20, 2001. The city's written comments and the requested information were submitted in an envelope postmarked September 21, 2001. Thus, you have failed to comply with section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to timely submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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). Compelling reasons exist when the information is made confidential by law or affects the interest of a third party. Open Records Decision No. 630 at 3 (1994). In this instance, you claim that the requested information is excepted under section 552.103, the "litigation exception." Section 552.103 is a permissive exception intended to protect only the interests of the governmental body. *See* Open Records Decision No. 473 (1987) (city's failure to meet 10-day deadline waived protections of sections 552.103 and 552.111). Therefore, section 552.103 does not provide a compelling reason to overcome the presumption of openness. Accordingly, the city must release the requested information submitted as Exhibit C.

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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 154964

Enc. Submitted documents

c: Mr. Michael Grant
P.O. Box 764438
Dallas, Texas 75232
(w/o enclosures)