



December 19, 2001

Mr. Gary H. Gatlin  
Attorney at Law  
P.O. Box 1985  
Jasper, Texas 75951

OR2001-5991

Dear Mr. Gatlin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156505.

The City of Jasper (the "city"), which you represent, received a request for information regarding correspondence received by the city from a named individual. You ask that this office provide you an opinion as to whether a particular submitted letter "is part of records made available to the public." We have reviewed the submitted information and have also considered the comments submitted to this office by the requestor. See Gov't Code § 552.304.

Initially, we will address whether the submitted information you indicate is responsive to the request is considered public information. Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Upon review of the submitted information, we conclude that it relates to the transaction of official city business, and therefore this information is public information subject to the Act. See Open Records Decision No. 549 (1990) (finding that holding in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), makes clear that almost all information in physical possession of governmental body is "public information" subject to Act; thus, information collected by public employee in the course of his employment is "information collected . . . in connection with the transaction of official business" within the meaning of Act).

Next, we must address a governmental body's procedural requirements when seeking a ruling under the Public Information Act. Subsections 552.301(a) and (b) of the Government Code provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You claim that you submitted a request for a ruling to this office on September 11, 2001, and you have provided us with a copy of your correspondence of that date. This office, however, has no record of having received such a request. Even assuming that you did timely submit your initial request, we note that in the letter dated September 11, 2001, you did not raise an exception to disclosure as required by section 552.301(b). We further note that you did not submit to this office, either by correspondence dated September 11, 2001, or by your later correspondence of October 15, 2001, (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld,<sup>1</sup> or (2) a copy of the written request for information, as required by section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to 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). You have not shown such a compelling interest to overcome the presumption that the information at issue is public. Accordingly, you must release the requested information. We caution that the distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352.

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<sup>1</sup>We note that in your letter to this office dated October 15, 2001, you state that "[u]pon receipt of the Attorney General's letter opinion we will be in a position to know if same is exempt under Section 552.103 of the Texas Public Information Act." However, as noted above, you make no arguments that section 552.103 exempts the requested information from disclosure.

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 Texas Building and Procurement 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,

A handwritten signature in cursive script that reads "Michael A. Pearle".

Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 156505

Enc. Submitted documents

c: Ms. Wincy Walker  
1206 Woodland Park  
Jasper, Texas 75951  
(w/o enclosures)