



December 20, 2001

Mr. Wiley B. McAfee
Police Legal Advisor
City of Irving
P.O. Box 152288
Irving, Texas 75015-2288

OR2001-6015

Dear Mr. McAfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156491.

The Irving Police Department (the "department") received a request for six categories of information concerning certain department policies and statistics. You inform us that the department only possesses information responsive to the fifth category. You claim, however, that the responsive information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note that subsections 552.301(a) and (b) 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.

In this case, you provided us with contradictory statements regarding the date on which the department received the records request at issue. In your letter to this office dated October 17, 2001, you state that the department received the request on October 2, 2001;

which, if correct, means you should have requested a decision from this office on or before October 16, 2001, not October 17. We point out that notations on the request indicate that it was received by the department on October 2. Your follow-up letter to our office, however, states that the department received the request on October 8, 2001; which contradicts your earlier representation, but if correct, means the department timely fulfilled its duties under section 552.301. Because of your contradictory statements we are unclear regarding when the city actually received the request for information. Accordingly, we conclude that you failed to comply with the procedural requirements of section 552.301 in timely requesting a decision from this office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to timely comply with the requirements of section 552.301 results in the legal presumption that the requested 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). While you assert that the responsive information is excepted under section 552.108, you have not demonstrated a compelling reason to withhold any of the information at issue under that provision. *See, e.g.*, Open Records Decision 586 (1991) (deciding that the need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108). Consequently, you must release the 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;

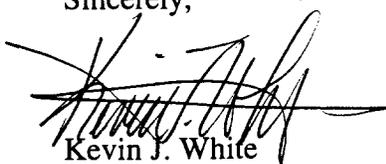
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things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



Kevin J. White
Assistant Attorney General
Open Records Division

KJW/seg

Ref: ID# 156491

Enc. Submitted documents

c: Mr. Hussein Sadruddi
Lawyers' Committee for Civil Rights Under Law of Texas
601 Haines Avenue
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(w/o enclosures)