



January 23, 2002

Mr. Ronald D. Stutes
Brown & Hoffmeister, LLP
1717 Main Street, Suite 4300
Dallas, Texas 75201

OR2002-0329

Dear Mr. Stutes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157931.

The City of McKinney (the "city"), which you represent, received a request for a copy of a new "Airport Layout Plan." You claim that the requested information is excepted from disclosure pursuant to section 552.111 of the Government Code. We have considered the exception you claim and have reviewed your arguments.

We note that the city failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from our office. Section 552.301 provides that a governmental body that requests an attorney general decision concerning a request for information must, within a reasonable time but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general a copy of the specific information requested or representative samples of the information if a voluminous amount of information was requested. See Gov't Code § 552.301(e)(1)(D). Although the city has provided us with a "legend of the plan," the city failed to provide us with the requested plan or samples of the plan that the city has determined to be representative of the requested information.

When a governmental body fails to submit a copy of the specific information requested or representative samples of the specifically requested 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 governmental body must demonstrate a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is a demonstration that some other source of law makes the requested information confidential or that third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). You claim that the requested information is excepted from disclosure pursuant to section 552.111 of the Government Code. However, we note that section 552.111 is a discretionary exception under the Public Information Act that does not provide a compelling reason to withhold information from the public.¹ *See* Open Records Decision No. 473 (1987) (governmental body may waive section 552.111). Accordingly, we conclude that the city must release the requested information 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

¹ 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. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

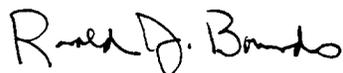
that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 157931

cc: Mr. Ronald E. Clary
Town Administrator
Town of Fairview
500 South Highway 5
McKinney, Texas 75069
(w/o enclosures)