



March 13, 2002

Ms. Lisa Aguilar  
Assistant City Attorney  
Legal Department  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2002-1206

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#160397.

The City of Corpus Christi (the "city") received a request for a copy of the investigation file for a specified case involving the alleged violation of disorderly conduct. You claim that the submitted information is excepted from disclosure pursuant to sections 552.101, 552.103, 552.107, 552.108, and 552.111 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and have reviewed the submitted representative sample documents.<sup>2</sup>

Initially, we note that section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested information must

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<sup>1</sup> Although the city claims that the information is excepted from disclosure pursuant to section 552.101 of the Government Code, it did not provide any independent reasons as to why section 552.101 applies to the information. Accordingly, we do not address the applicability of section 552.101 of the Government Code to the information.

<sup>2</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

be disclosed not later than the tenth business day after the date of receiving the written request for information. *See* Gov't Code § 552.301(b). You state that the city received the written request on January 2, 2002. However, the city did not request a decision from our office concerning the requested information until January 17, 2001, more than ten business days after the date that the city received the request. Accordingly, we conclude that the city failed to comply with the procedural requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b).

Because the city failed to request a decision within ten business days of receiving the request, 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 city must demonstrate a compelling interest to withhold the information in order to overcome this presumption. *See id.* Normally, a governmental body demonstrates a compelling interest by showing that some other source of law makes the information confidential or that the release of the requested implicates third party interests. *See* Open Records Decision No. 150 at 2 (1977). You claim that the submitted information is excepted from disclosure pursuant to sections 552.103, 552.107, and 552.111 of the Government Code. However, these provisions are discretionary exceptions to disclosure under the Public Information Act that do not constitute a compelling interest sufficient to overcome the presumption that the requested information is public.<sup>3</sup> Furthermore, we find that the city has not demonstrated a compelling interest under section 552.108 of the Government Code for withholding the requested information from disclosure. *See* Open Records Decision No. 586 (1991) (stating that need of governmental body, other than one that received written request, may constitute compelling reason to overcome presumption that information is public). Accordingly, the city may not withhold any portion of the information from disclosure pursuant to these sections of the Government Code.

However, we note that some portions of the information may be excepted from disclosure pursuant to section 552.117 of the Government Code. Section 552.117(1) excepts from disclosure home addresses, home telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(1). However, information subject to section 552.117(1)

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<sup>3</sup> 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), 473 (1987) (governmental body may waive section 552.111), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Accordingly, we conclude that the city must withhold from disclosure the information that we have marked pursuant to section 552.117(1), if the current or former city employees requested that this information be kept confidential under section 552.024 prior to the city's receipt of the request. However, if the current or former city employees did not request that this information be kept confidential pursuant to section 552.024 prior to the city's receipt of the request, we conclude that the city must release the marked information to the requestor. The city must release the remaining 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).

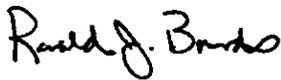
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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#160397

Enc. Marked documents

cc: Mr. Richard W. Crews, Jr.  
Mr. Simon B. Purnell  
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(w/o enclosures)