



May 10, 2002

Mr. Mark E. Dempsey  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-2000

OR2002-2494

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162696.

The City of Garland (the "city") received a request for ten categories of information, including a copy of any photograph of Councilman Michael Holden that currently appears on the city's website. You claim that the requested photograph is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

Initially, we note that you have informed the requestor that you do not have information responsive to categories 4, 5, 7, 9 and 10 of her request. You have also informed the requestor that you believe that there are no documents responsive to category 6 of her request, but invite her to clarify this category of her request. *See* Gov't Code § 552.222 (providing that a governmental body may ask the requestor to clarify the request if what information is requested is unclear to the governmental body). You further inform the requestor that to provide information responsive to categories 2, 3, 8, and 10 of her request would require the city to conduct legal research. We note that the Public Information Act (the "Act") does not require a governmental body to prepare answers to questions posed by a requestor or to do legal research. *See* Open Records Decision Nos. 563 at 8 (1990) (considering request for federal and state laws and regulations), 555 at 1-2 (1990) (considering request for answers to fact questions). Thus, you request a decision from this

office only with respect to category 1 of the request, which seeks a copy of any photograph of Councilman Michael Holden that currently appears on the city's website.

You claim that the submitted photograph is copyrighted and excepted from disclosure under section 552.101 in conjunction with federal copyright laws. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. As a general rule, statutory confidentiality requires express language making certain information confidential or stating that the information shall not be released to the public. *See* Open Records Decision Nos. 478 at 2 (1987), 658 at 4 (1998) (stating that statutory confidentiality provision must be express, and a confidentiality requirement will not be implied from the statutory structure). Federal copyright law provides a prohibition against the reproduction of copyrighted material; however, it does not state that copyrighted material is confidential or may not be released to the public. We are unaware of any provision of law that contains language that makes the submitted photograph expressly confidential. Therefore, we conclude that the photograph is not excepted by section 552.101.

Nevertheless, a custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

Finally, you ask this office to provide an opinion as to the meaning of the term "unassisted." Unfortunately, this division lacks the authority to issue legal opinions regarding compliance with federal copyright laws. Therefore, we are unable to provide you with an opinion on this matter. You may be able to obtain such advice by contacting the Copyright Public Information Office at (202) 707-3000 and [www.loc.gov/copyright](http://www.loc.gov/copyright).

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,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 162696

Enc: Submitted documents

c: Ms. Jean C. McNeal  
4017 Hillsdale Lane  
Garland, Texas 75042  
(w/o enclosures)