



August 13, 2002

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
1500 Marilla
Dallas, Texas 75201

OR2002-4450

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167000.

The City of Dallas (the “city”) received a request for information relating to the “Assessment Center Process” for uniform positions of the Dallas Fire and Police Departments. You state that you will release some information to the requestor. You inform us that the majority of Exhibit E was subject to a previous determination from this office and that the circumstances surrounding that ruling have not changed; accordingly, the previously reviewed portion of Exhibit E may be withheld in accordance with Open Records Letter No. 2001-5848 (2001) *See* Open Records Decision No. 673 at 6-7 (2001) (discussing types of previous determinations issued by this office).¹ You claim that the remaining responsive information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.²

¹In your initial correspondence with this office, you also contended that third parties—Management Scientists II (“Management”) and Booth Research Group (“Booth”)—may have proprietary interests in Exhibit E. As we have already determined that Exhibit E is subject to a previous determination, we need not address the proprietary nature of this exhibit at this time.

² 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.

Initially, we must address the city's obligations under section 552.301 of the Government Code. A governmental body wishing to withhold requested information must request an attorney general's decision no later than the tenth business day after the date of receiving the written request. Gov't Code § 552.301(b). In this case, the city failed to request a decision from this office within ten business days of receiving the request on May 16, 2002. You explain, however, that because of the broad nature of the request, you sought clarification from the requestor on May 22, 2002. See Gov't Code § 552.222(b) (authorizing governmental body's request for clarification of records request). The ten-business-day deadline for requesting a decision from this office was tolled only during the time that the city was awaiting a response to its clarification request. See Open Records Decision No. 663 at 5 (1999). The city received the requestor's clarification on May 28, 2002; consequently, the ten-business-day period resumed on May 29, 2002. Thus, the deadline for submitting a request for a decision from this office was June 6, 2002. You submitted your request for a decision on June 10; accordingly, we conclude that you did not timely request a decision from this office under section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. See Gov't Code § 552.302; *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); Open Records Decision No. 319 (1982). A compelling reason exists where a third party's interests are implicated or another source of law makes the information confidential. See Open Records Decision No. 150 (1977). Section 552.107 is a discretionary exception and does not provide a compelling reason to overcome the presumption of openness. See Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege); see also Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Accordingly, we will not address the city's arguments that Exhibits F and G are protected under that section.

In summary, the previously reviewed portion of Exhibit E may be withheld in accordance with our previous determination in Open Records Letter No. 2001-5848 (2001). All other responsive information must be released.

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).

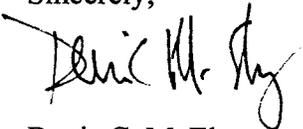
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 167000

Enc. Submitted documents

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