OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 16, 2002

Mr. Scott A. Durfee
General Counsel
Harris County District Attorney's Office
1201 Franklin Street, Suite 600
Houston, Texas 77002

OR2002-7176

Dear Mr. Durfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173763.

The Harris County Organized Crime Task Force (the "task force") received a request for copies of an offense report and accompanying reports pertaining to a specified task force incident. You claim that the requested information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered your claimed exceptions to disclosure.

We note that section 552.301(e) of the Government Code requires that a governmental body that requests an attorney general decision under section 552.301(a) 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, among other items, a copy of the specific information requested or representative samples of the information if a voluminous amount of information was requested and label that copy of the specific information, or of the representative samples, to indicate which exceptions apply to which parts of the copy. *See* Gov't Code § 552.301(e). To date, the task force has not submitted any portion of the requested information to us for our review. Therefore, we find that the task force failed to request a decision from our office in accordance with section 552.301.

Because the task force failed to comply with the procedural requirements of section 552.301, the information at issue is now 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 task force must demonstrate a compelling interest in order to overcome the presumption that the requested information is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the requested information confidential or when third party

interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although the task force claims that the requested information is excepted from disclosure pursuant to section 552.108 of the Government Code, we note that it has not demonstrated a compelling interest under that exception that would allow the requested information to be withheld from disclosure. *But see* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108 in certain circumstances). Furthermore, because the task force did not submit a copy of the requested information for our review, we have no basis for concluding that any portion of it is excepted from disclosure under section 552.101 of the Government Code or is otherwise confidential by law. Accordingly, we conclude that the task force must release the requested information to the requestor in its entirety.

However, we caution the task force that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code § 552.352. Prior to releasing the requested information, the task force should ensure that it does not contain any such confidential information. If you believe that any portion of the information is indeed confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

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

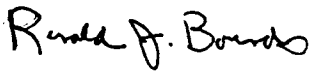
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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/lmt

Ref: ID# 173763

c: Mr. Stephen Dean
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