



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 29, 2003

Mr. Miles K. Risley
Senior Assistant City Attorney
City of Victoria
P. O. Box 1758
Victoria, Texas 77902-1758

OR2003-0618

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175731.

The City of Victoria (the "city") received a written request for the following information:

All officer reports and narratives relating to gang members coming to De Tar Hospital, located at 506 San Antonio Street in Victoria on or about February 16, 1994. Said gang members were brandishing weapons in the ER area of said hospital, after the death of Raydon Alexander.

You indicate that some of the requested information will be made available to the requestor. You contend, however, that portions of the requested information are excepted from required public disclosure pursuant to section 552.108 of the Government Code and Texas Rule of Evidence 508.

We note, however, that none of the records you submitted to this office in connection with the records request make any mention of the incident referenced in the records request; rather, the records you submitted to this office pertain solely to the criminal investigation of the homicide of Ray Don Alexander. Because the requestor did not request records pertaining to the homicide investigation, we conclude that the documents you submitted to this office are not responsive to the records request. Consequently, we do not address at this time whether submitted documents are excepted from required public disclosure. Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Under section 552.301(e)(1)(D), "[a] governmental body that requests an attorney general decision . . . must . . . not later than the 15th business day after the date of

receiving the written request [for information] . . . submit to the attorney general . . . a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested[.]” Section 552.302 provides that “[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.”

We thus conclude that you have failed to comply with section 552.301 with respect to the requested information. Therefore, this information is presumed to be public and must be released unless there is a compelling reason to withhold the information from the public. Gov’t Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). Although you contend that portions of the requested information are excepted from required public disclosure pursuant to section 552.108, without a copy of the records at issue, this office is unable to determine that you have demonstrated a compelling reason to withhold that information under section 552.108. *See Open Records Decision No. 177 (1977)* (custodian may waive “law-enforcement exception”). Consequently, we have no choice but to order the requested information released pursuant to section 552.302, to the extent that the information is held by the city. If you believe that any of this information is confidential and may not lawfully be released, then 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/RWP/lmt

Ref: ID# 175731

Enc: Submitted documents

c: Mr. Bernard T. Klimist
204 East Santa Rosa
Victoria, Texas 77901
(w/o enclosures)