



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

April 17, 2003

Mr. Brad Norton  
Assistant City Attorney  
Law Department  
City of Austin  
P.O. Box 1546  
Austin, Texas 78767-1546

OR2003-2645

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179634.

The City of Austin (the "city") received a request for information relating to a case in municipal court, including witness statements, maintenance records for a police vehicle, and a police officer's arrest and ticketing record. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.

We begin by noting that the city has not complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) provides in part that a governmental body that requests an attorney general decision must submit to the attorney general, not later than the 15<sup>th</sup> business day after the date of its receipt of the request for information, a copy of the specific information requested or representative samples if the information is voluminous. *See* Gov't Code § 552.301(e)(1)(D). If the 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. *See* Gov't Code § 552.302.

You have not submitted the requested information, or representative samples of the information, that the city claims is excepted from disclosure. Thus, the city has not complied with section 552.301 in requesting this decision. Therefore, the requested information is presumed to be public and must be released under section 552.302, unless there is a

compelling reason to withhold any of the information from the public. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or where third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Sections 552.103 and 552.108 are discretionary exceptions to disclosure that protect the governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 542 at 4 (1990) (litigation exception does not implicate third-party rights and may be waived), 177 at 3 (1977) (law enforcement exception may be waived). The city's claims under sections 552.103 and 552.108 do not provide compelling reasons for non-disclosure under section 552.302. In failing to comply with section 552.301, the city has waived its claims under sections 552.103 and 552.108. *See also* Gov't Code § 552.007; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). You also claim that some of the requested information is confidential by law under section 552.101. However, you have not submitted the requested information or a representative sample of the information, and thus we have no basis for finding that any of the information is confidential. Therefore, we have no choice but to order the requested information released per section 552.302. If you believe that any of the requested information is confidential and may not lawfully be released, you must challenge the 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

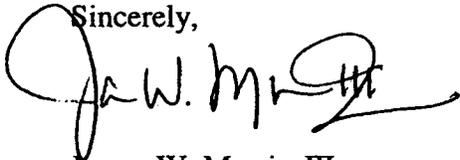
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The 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 Dep't of Pub. 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,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a stylized flourish at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 179634

c: Mr. Thomas Millikan  
7635 Guadalupe Street, #805  
Austin, Texas 78752