OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

June 3, 2003

Mr. Bill Ainsworth
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2003-3759

Dear Mr. Ainsworth:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182123.

The City of Corpus Christi (the "city") received a written request for certain records pertaining to a named city employee, as well as other information. You contend that the requested information is excepted from required disclosure pursuant to sections 552.101, 552.102, 552.107, 552.111, and 552.117 of the Government Code.

We first note that the city has not complied with the procedural requirements of 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:

> (e) 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]:
>
> > (1) submit to the attorney general:
> >
> > > (A) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld; [and]

> . . .
>
> (D) a copy of the specific information requested, or . . . representative samples of the information if a voluminous amount of information was requested[.]

Gov't Code § 552.301(e)(1)(A), (D). 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."

As of the date of this decision, you have not submitted any written comments demonstrating the applicability of the exceptions to disclosure that the city claims. *See* Gov't Code § 552.301(e)(1)(A). Likewise, you have not submitted the requested information, or a representative sample of the information, that the city claims is excepted from disclosure. *See id.* § 552.301(e)(1)(D). 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 third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Sections 552.107 and 552.111 of the Government Code are discretionary exceptions to disclosure that protect the governmental body's interests and may be waived.[1] The city's claims under these exceptions 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 552.107 and 552.111. *See* Gov't Code § 552.007; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). The city also claims exceptions to disclosure under sections 552.101, 552.102, and 552.117. These exceptions can provide compelling reasons for non-disclosure under section 552.302. However, you have not submitted the requested information or a representative sample of the information, and thus we have no basis for concluding that there is any compelling reason to withhold any of the requested information under sections 552.101, 552.102, or 552.117. 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.

---

[1] *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 630 at 4 (1994) (Gov't Code § 552.107(1) may be waived), 470 at 7 (1987) (Gov't Code § 552.111 may be waived).

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,

Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/RWP/sdk

Ref: ID# 182123

Enc: Submitted documents

c: Ms. Pricilla G. Leal
4738 Cheryl
Corpus Christi, Texas 78415
(w/o enclosures)