



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 23, 2003

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

OR2003-5094

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 184699.

The City of Austin (the "City") received a request for the following three categories of information:

1. A current list of City employees assigned to the Austin Police Department [the "Department."]
2. A current list of certified peace officers assigned to the [Department].
3. A current list of [City] e-mail addresses for all City employees assigned to the [Department].

You state the City will release the names of police employees and police officers to the requestor. You assert the requested list of e-mail addresses is excepted from disclosure under section 552.108 of the Government Code. We reviewed the representative sample of information you submitted and considered the exception you claim.¹

¹ We assume 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 those records contain substantially different types of information than that submitted to this office.

Initially, we will address the Department's prior release of the e-mail addresses. You inform us that "[t]he [Department's] e-mail list was . . . released recently to another requestor." Section 552.007 of the Government Code provides as follows:

(a) This chapter does not prohibit a governmental body or its officer for public information from voluntarily making part or all of its information available to the public, unless the disclosure is expressly prohibited by law or the information is confidential under law.

(b) Public information made available under Subsection (a) must be made available to any person.

Gov't Code § 552.007. This provision prohibits the selective disclosure of information. *See* Gov't Code § 552.007(b). As a general rule, if a governmental body voluntarily releases information to one member of the public, the Act's exceptions to disclosure are waived unless the information is deemed confidential under the Act. *See* Open Records Decision Nos. 490 (1988), 463 (1987).

You argue that the prior release of the e-mail list was not "voluntary" for purposes of section 552.007 because it was "based on a perceived statutory obligation." In support of this argument, you cite to Open Records Decision No. 454 (1986), in which this office found that a governmental body's release of information was involuntary because the governmental body concluded that it was constitutionally obligated to release the requested information. Open Records Decision No. 454 at 3 (1986). In this case, you provide no constitutional basis for the Department's previous release of the e-mail list. You have not argued, much less demonstrated, that the City released the information based on a reasonable belief that the City was constitutionally obligated to do so. Further, we do not find that your reliance on Open Record Letter Nos. 2002-6979 (2002) and 2002-1205 (2002) demonstrates that your previous release of the e-mail list was involuntary. Thus, we conclude the City may not withhold the requested e-mail addresses under section 552.108, a discretionary exception, because the City waived its right to claim this exception when it previously released the information at issue. *See* Gov't Code § 552.007; Open Records Decision Nos. 518 (1989), 192 (construing the statutory predecessor to Gov't Code § 552.007 to prohibit a governmental body from engaging in selective disclosure), 177 at 3 (1977) (stating that governmental body may waive statutory predecessor to Gov't Code § 552.108). Therefore, the City must release the requested e-mail addresses to the requestor.

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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 184699

Enc: Submitted documents

c: Ms. Shelly Wilkison
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