



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 14, 2003

Mr. Samith Hill  
Chief of Police  
Forest Hill Police Department  
3336 Horton Road  
Forest Hill, Texas 76119

OR2003-8187

Dear Chief Hill:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191074.

The Forest Hill Police Department (the "department") received a request for "[a]ny incident report, offense report, internal police reports, complaints filed or citations issued against any officer alleging assault, stalking, threats, or harassment toward spouses, boyfriends or girlfriends or children" during a specified time interval. We understand you to assert that the department has no means of locating the types of records to which the requestor seeks access. You also appear to claim that any responsive records held by the department are excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered your arguments.<sup>1</sup>

Initially, we address your representation that the department maintains no incident reports, offense reports, citations, internal reports, or complaints that identify the subject of the record as a police officer and reflect "the correlated relationship toward a spouse, boyfriend, girlfriend or children[.]" We agree that the Public Information Act (the "Act"), chapter 552 of the Government Code, does not require the department to create new information for the

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<sup>1</sup>You also have submitted a copy of a letter to the requestor in which you state, among other things, that "facsimiles are not acceptable in the future when making a request for public information." Please note that section 552.301(c) of the Government Code expressly provides that "[a] written request [for information] includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, *by electronic mail or facsimile transmission.*" Gov't Code § 552.301(c) (emphasis supplied).

purpose of responding to this request. *See* Open Records Decision No. 555 at 1-2 (1990). Likewise, the Act does not require the department to obtain information that is not in its possession, provided that no other individual or entity holds such information on behalf of the department. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). Nevertheless, a governmental body that receives a request for information under the Act must make a good-faith effort to relate the request to any responsive information that is within the governmental body's custody or control. *See* Open Records Decision No. 561 at 8-9 (1990). Therefore, the department is obligated to make a good-faith effort to relate the present request to potentially responsive information that was held by or available to the department when it received the request.

Next, we address your obligations under section 552.301 of the Act. 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(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body does not request an attorney general decision as prescribed 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 id.* § 552.302.

We understand you to contend that any responsive information held by the department is excepted from disclosure under sections 552.101 and 552.111 of the Act. However, you have not submitted any information, or representative samples of information, that you claim is excepted from disclosure, as required by section 552.301(e)(1)(D).<sup>2</sup> Therefore, any information held by the department that is responsive to this request is presumed to be public and must be released, unless there is a compelling reason to withhold any such information from public disclosure. *See* Gov't Code § 552.302; *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

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<sup>2</sup>We note that the documents that you have submitted consist of blank specimens of the department's IAD (Internal Affairs Division) Control Log and Personnel Complaint Report forms.

Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.111 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. A claim under this exception does not provide a compelling reason for non-disclosure under section 552.302. The department has waived its claim under section 552.111 in failing to comply with section 552.301. *See* Gov't Code § 552.007; Open Records Decision No. 663 at 5 (1999) (untimely request for decision under Gov't Code § 552.301 resulted in waiver of governmental body's discretionary exceptions). You also raise section 552.101 of the Government Code.<sup>3</sup> A claim under section 552.101 can provide a compelling reason for non-disclosure under section 552.302. However, you have not submitted any information that you claim is confidential under section 552.101. Thus, we have no basis for concluding that there is any compelling reason to withhold any such information under this exception. Therefore, we have no choice but to order you to release any information held by the department that is responsive to this request for information, in accordance with section 552.302. If you believe that any such information is 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

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<sup>3</sup>Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. You raise section 552.101 in conjunction with section 143.089 of the Local Government Code. You inform us that you have referred the requestor to the city civil service director. *See* Local Gov't Code § 143.089(a), (g).

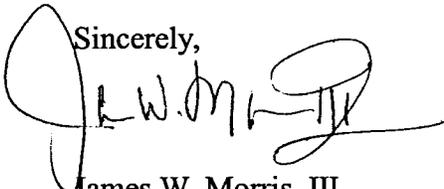
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The 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,



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

JWM/sdk

Ref: ID# 191074

c: Ms. Donna Ressler  
Fox 4 News  
400 North Griffin  
Dallas, Texas 75202  
(w/o enclosures)