



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

December 11, 2003

Ms. Valerie Coleman-Ferguson  
Assistant General Counsel  
University of Houston System  
311 East Cullen Building  
Houston, Texas 77204-2028

OR2003-8906

Dear Ms. Coleman-Ferguson:

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# 192983.

The University of Houston Police Department (the "department") received a request for the police report in case number 030587. You state that some responsive information has been provided to the requestor. You claim that the address and telephone number of the complainant are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We will first address your responsibilities under the Act. Subsections 552.301(a) and (b) of the Government Code provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You inform us that the department received the request for information on September 22, 2003. You did not request a decision from this office until October 13, 2003. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(b) of the Government Code.

Because the department failed to comply with the procedural requirements of section 552.301 in requesting this decision from us, the information at issue is now presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The department must demonstrate a compelling interest in order to overcome the presumption that the information at issue is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or when third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although the department indicates that portions of the submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege, we note that a claim under the informer's privilege may be waived by a governmental body since the privilege belongs to the government. *See* Open Records Decision No. 549 at 6 (1990). In this instance, the department waived its interest in this claim by failing to comply with the requirements of section 552.301(e) of the Government Code. Therefore, we conclude that the common-law informer's privilege cannot provide a compelling interest in this instance.

We note that although the department seeks to withhold the address and telephone number of the complainant in the requested case, the submitted documents do not contain this information. However, section 552.130 of the Government Code is applicable to some of the submitted information. Section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. We have marked the information in the submitted documents that the department must withhold pursuant to section 552.130. The remaining submitted information must be released to the requestor.<sup>1</sup>

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<sup>1</sup>Some of the documents marked for release contain or consist of confidential information that is not subject to release to the general public. *See* Gov't Code § 552.352. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023. Because some of the information is confidential with respect to the general public, if the department receives a future request for this information from an individual other than the requestor or his authorized representative, the department should again seek our decision.

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 cursive script, appearing to read "Cindy Nettles".

Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 192983

Enc. Submitted documents

c: Mr. Oluwolé Sokoya  
P.O. Box 310251  
Houston, Texas 77231  
(w/o enclosures)