



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

February 17, 2004

Ms. Patricia A. Adams  
Town Attorney  
Town of Trophy Club  
100 Municipal Drive  
Trophy Club, Texas 76262

OR2004-1142

Dear Ms. Adams:

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# 196147.

The Town of Trophy Club (the "town") received a request for eighteen categories of information pertaining to the requestor's client, other firefighter and paramedic personnel, and town policies and procedures. You state that some responsive information has been released to the requestor and to the requestor's client in response to prior requests for information. Because the town has voluntarily disclosed this information, the town may not withhold such information from further disclosure unless its release is expressly prohibited by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 (1989).

You inform us that the town previously received requests for some of the information responsive to the instant request and that you previously requested opinions from this office with respect to such information. In response, this office issued Open Records Letter Nos. 2004-0811 (2004), 2004-0808 (2004), 2004-0314 (2004), and 2003-9063 (2003). In regard to the information responsive to the current request that is identical to the information previously requested and ruled upon by this office, we conclude that the town must continue to rely on Open Records Letter Nos. 2004-0811, 2004-0808, 2004-0314, and 2003-9063 as previous determinations and withhold or release the requested information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts,

circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

You claim that the remaining requested information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code, as well as under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you did not submit information responsive to categories 5, 8, and 13-18 of the request for information. You contend that categories 5, 8, and 13 of the request are overbroad and too vague for the town to determine what information is responsive. Numerous opinions of this office have addressed situations in which a governmental body has received either an "overbroad" written request for information or a written request for information that the governmental body is unable to identify. Open Records Decision No. 561 at 8-9 (1990) states:

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982), 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974).

A request for records made pursuant to the Act may not be disregarded simply because a citizen does not specify the exact documents he desires. Open Records Decision No. 87 (1975). We note that if a request for information is unclear, a governmental body may ask the requestor to clarify the request. Gov't Code § 552.222(b); *see also* Open Records Decision Nos. 561 at 8 (1990), 333 (1982). In this instance, you do not give any indication that the town requested any clarification from the requestor. However, we believe that the requestor was clear that he wants all documents in the town's possession relating to the named individuals that are not responsive to certain other categories of the request and all documents related to the decision to terminate the requestor's client. Although section 552.222 allows the town to ask the requestor to narrow the scope of his request, section 552.222 does not relieve the town from seeking a timely request for a decision from this office in compliance with section 552.301 or relieve the town of its duty to comply with the request. Thus, we find that the town failed to act as required under section 552.301 of the Government Code.

Under section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. The town has not submitted to this office a copy of the specific information requested in categories 5, 8, and 13-18 or a representative sample.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982).

Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Sections 552.103 and 552.107 of the Government Code are discretionary exceptions to disclosure that protect the governmental body's interests and may be waived by the governmental body. Thus, sections 552.103 and 552.107 do not demonstrate compelling reasons to withhold information from the public. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 676 at 12 (2002) (harm to governmental body's interests under section 552.107 not compelling reason for non-disclosure); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Additionally, although you claim that information responsive to categories 15-18 of the request may be excepted from disclosure under HIPAA, because the town did not submit any of the information at issue to this office for our review, we have no basis for finding it is excepted from public disclosure.<sup>1</sup> Thus, the information responsive to categories 5, 8, and 13-18 of the request must be released per section 552.302.

Next, we note that the submitted documents contain information that falls within the purview of section 552.022. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government

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<sup>1</sup>See Open Records Decision No. 681 at 9 (2004) (HIPAA does not make information confidential for purposes of section 552.101).

Code unless they are expressly confidential under other law. The information that you submitted to us for review contains a completed report or investigation, which falls into one of the categories of information made expressly public by section 552.022. See Gov't Code section 552.022(a)(1). Section 552.022(a)(1) states that a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it is excepted under section 552.108 of the Government Code or is expressly confidential under other law.<sup>2</sup> You contend that this information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. Sections 552.103 and 552.107 are discretionary exceptions to disclosure that protect the governmental body's interests and are therefore not other law that makes information expressly confidential for purposes of section 552.022(a). See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 676 at 6 (2002) (information subject to section 552.022 may not be withheld under section 552.107), 663 (1999) (governmental body may waive section 552.103), 630 at 4-5 (1994) (governmental body may waive statutory predecessor to section 552.107), 522 (1989) (discretionary exceptions in general). Thus, the information subject to section 552.022(a)(1) may not be withheld under section 552.103 or 552.107. However, the attorney-client privilege is also found in Rule 503 of the Texas Rules of Evidence. The Texas Supreme Court has held that “[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are ‘other law’ within the meaning of section 552.022.” *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Thus, we will determine whether the information subject to section 552.022 is confidential under Rule 503. We further note that section 552.101 of the Government Code is applicable to the information subject to section 552.022.<sup>3</sup> Because section 552.101 is considered a confidentiality provision for the purpose of section 552.022, we will consider the application of that section to this information.

First, we address your claim under section 552.103 with regard to the information that is not subject to section 552.022. Section 552.103 provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

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<sup>2</sup>You do not assert section 552.108 as an exception to disclosure of this information.

<sup>3</sup>The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under 552.103(a). Additionally, the governmental body must demonstrate that the litigation was pending or reasonably anticipated as of the day it received the records request. Gov't Code § 552.103(c).

The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.<sup>4</sup> Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983).

This office has held that a governmental body reasonably anticipates litigation when it receives a claim letter and affirmatively represents to this office that the claim letter complies with the notice requirements of the Texas Tort Claims Act ("TTCA"), Civil Practices and Remedies Code chapter 101, or an applicable municipal ordinance. Open Records Decision

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<sup>4</sup>In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

No. 638 (1996). Although you state that the town has received a letter submitted by the requestor on behalf of a terminated employee that “is an attempt to provide notice of [the employee’s] alleged claim for wrongful termination pursuant to the Texas Civil Practices and Remedies Code,” you have not represented that the notice complies with the requirements of the TTCA. In fact, you state that the letter “purports to be a notice of claim letter,” but that the town “takes issue with the accuracy of the statements . . . and the sufficiency of the content of the letter.” We therefore conclude that you have not met your burden under section 552.103 of the Government Code. Consequently, we conclude that none of the submitted information may be withheld pursuant to section 552.103.

You next assert that section 552.107(1) of the Government Code, which protects information coming within the attorney-client privilege, excepts from disclosure a portion of the information not subject to section 552.022. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002).

First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Finally, the attorney-client privilege applies only to a *confidential* communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5).

Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no writ). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless

otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein). Based upon our review of your arguments, we find that you have failed to demonstrate that any of the submitted information consists of communications between or among clients, client representatives, lawyers, or lawyer representatives. Thus, we conclude that the town may not withhold any portion of the information at issue under section 552.107(1).

You also assert that the information subject to section 552.022 is protected from disclosure under the attorney-client privilege. Rule 503(b)(1) of the Texas Rules of Evidence provides:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;

(B) between the lawyer and the lawyer's representative;

(C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(D) between representatives of the client or between the client and a representative of the client; or

(E) among lawyers and their representatives representing the same client.

A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. Tex. R. Evid. 503(a)(5).

Accordingly, in order to withhold attorney-client privileged information from disclosure under Rule 503, a governmental body must 1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; 2) identify the parties involved in the communication; and 3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. *See Open Records Decision No. 676 (2002)*. Upon a demonstration of all three factors, the entire

communication is confidential under Rule 503 provided the client has not waived the privilege or the communication does not fall within the purview of the exceptions to the privilege enumerated in Rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 4527 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1998, no pet.) (privilege attaches to complete communication, including factual information).

Upon review of the information subject to the purview of section 552.022, however, we find that you have not demonstrated, however, that any of the information at issue comes within the scope of Texas Rule of Evidence 503. *See* Open Records Decision No. 676 at 5-11 (2002). Therefore, the town may not withhold any of the information at issue under rule 503.

We next note that the submitted information contains employee W-4 forms. Employee W-4 forms are excepted from disclosure by section 6103(a) of title 26 of the United States Code. Open Records Decision No. 600 (1992).<sup>5</sup> Accordingly, the town must withhold the submitted employee W-4 forms under section 552.101 in conjunction with section 6103(a).

Section 552.101 also encompasses the common-law right to privacy. Information must be withheld from disclosure under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

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<sup>5</sup>Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by other statutes.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court applied the common-law right to privacy addressed in *Industrial Foundation* to an investigation of alleged sexual harassment. The investigation files at issue in *Ellen* contained third-party witness statements, an affidavit in which the individual accused of the misconduct responded to the allegations, and the conclusions of the board of inquiry that conducted the investigation. See 840 S.W.2d at 525. The court upheld the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the disclosure of such documents sufficiently served the public's interest in the matter. *Id.* The court further held, however, that "the public does not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

Thus, if there is an adequate summary of an investigation of alleged sexual harassment, the investigation summary must be released under *Ellen*, but the identities of the victims and witnesses of the alleged sexual harassment must be redacted, and their detailed statements must be withheld from disclosure. See also Open Records Decision Nos. 393 (1983), 339 (1982). If no adequate summary of the investigation exists, then all of the information relating to the investigation ordinarily must be released, with the exception of information that would tend to identify the victims and witnesses. In either case, the identity of the individual accused of sexual harassment is not protected from public disclosure. Common-law privacy does not protect information about a public employee's alleged misconduct on the job or complaints made about a public employee's job performance. See Open Records Decision Nos. 438 (1986), 405 (1983), 230 (1979), 219 (1978).

The completed investigation that is subject to section 552.022(a)(1) involves allegations of sexual harassment. Accordingly, *Morales v. Ellen* is applicable to the information that relates to the investigation. In this instance, the investigative information includes an adequate summary of the investigation, as well as statements of the person accused of sexual harassment. You must release that information, which we have marked, except for those portions of the information that identify the victims and witnesses of the alleged sexual harassment. You must withhold the information that identifies the victims and witnesses, along with the rest of the information that relates to the investigation, under section 552.101 of the Government Code in conjunction with common-law privacy and *Ellen*, other than information that identifies the requestor's client. See *Ellen*, 840 S.W.2d at 525. Pursuant to section 552.023 of the Government Code, the requestor has a special right of access, beyond that of the general public, to information held by the town that pertains to the requestor's client and that is protected from disclosure to the public by laws intended to protect the privacy interests of the requestor's client. See Gov't Code § 552.023(a). We have marked the information in the documents subject to section 552.022 that you must withhold under section 552.101. Additionally, we conclude that the portions of the remaining submitted information that we have marked is protected by the common-law right of privacy and must be withheld under section 552.101 of the Government Code.

We note that the submitted records contain information subject to section 552.117 of the Government Code. Section 552.117(a)(2) excepts from disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members regardless of whether the peace officer made an election under section 552.024 of the Government Code. Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Thus, the town must withhold a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members under section 552.117(a)(2).

Furthermore, section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether section 552.117 protects information from disclosure depends on when the request for information is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the town must withhold personal information under section 552.117(a)(1) on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the commission received the present request for information. For those employees who timely elected to keep their personal information confidential, the town must withhold the information that we have marked under section 552.117(a)(1). The town may not withhold this information under section 552.117(a)(1) for those employees who did not make a timely election to keep the information confidential.

Even if an employee has not made a timely election under section 552.024, a social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the town should ensure that no such information was obtained or is maintained pursuant to any provision of law enacted on or after October 1, 1990.

We further note that section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, we have marked the information in the submitted documents that the town must withhold pursuant to section 552.130.

In summary, the town must continue to rely on our previous rulings as previous determinations in regard to the information responsive to the current request that is identical to the information previously requested and ruled upon by this office. We have marked the information that must be withheld under section 552.101 in conjunction with common-law privacy. Employee W-4 forms must be withheld under section 552.101 and federal law. The town must withhold a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members under section 552.117(a)(2). For those employees who timely elected to keep their personal information confidential, the town must withhold the information that we have marked under section 552.117(a)(1). The social security numbers of employees who did not make a timely election under section 552.024 may be confidential under federal law. We have marked the information in the submitted documents that the town must withhold pursuant to section 552.130. The remaining submitted information must be released 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 196147

Enc. Submitted documents

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