



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2004

Ms. Mia Settle-Vinson
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2004-2049

Dear Ms. Vinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197647.

The City of Houston (the "city") received a request for an internal affairs file concerning the reprimand of a named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the city failed to fully comply with section 552.301 of the Government Code. Section 552.301 requires a governmental body that seeks to withhold information from disclosure to ask for an attorney general's decision and state the exceptions that apply not later than the tenth business day after the date it receives the written request for information. Gov't Code § 552.301(a), (b). You submitted a request for a decision to this office within the ten day deadline. However, you failed to raise section 552.103 of the Government Code. Therefore, because you failed to timely raise this exception, the city has waived its claim under section 552.103 of the Government Code. *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); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general).

Although you timely raised sections 552.101 and 552.108 of the Government Code, you failed to submit any arguments against disclosure under these exceptions. *See* Gov't Code

¹We note that you also raised sections 552.117 and 552.130 of the Government Code, but subsequently withdrew your assertion that these exceptions were applicable to the requested information.

§ 552.301(e) (the governmental body must submit written comments demonstrating the applicability of the claimed exceptions to the requested information not later than the fifteenth business day after the request for information is received). Therefore, because you failed to submit any arguments against disclosure under sections 552.101 and 552.108 as mandated by section 552.301(e), the requested information is presumed public information. *See* Gov't Code § 552.302 (failure to comply with section 552.301 results in a presumption of openness).

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). You claim that the requested information is subject to section 552.108 of the Government Code. In this instance, your section 552.108 claim does not provide a compelling reason to overcome the presumption that this information is public. *See* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108 in certain circumstances). Therefore, you may not withhold the requested information under section 552.108 of the Government Code. You also claim that section 552.101 excepts the requested information from disclosure. Section 552.101 can provide a compelling reason to withhold information from disclosure. However, the information at issue does not contain any confidential information that must be withheld pursuant to section 552.101 of the Government Code. Therefore, section 552.101 is not applicable to the information at issue. Accordingly, you must release the requested information 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); *Tex. 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,



Melissa Vela-Martinez
Assistant Attorney General
Open Records Division

MVM/sdk

Ref: ID# 197647

Enc. Submitted documents

c: B.R. Sharma
City of Houston
Crime Lab Division
1200 Travis
Houston, Texas 77002
(w/o enclosures)