



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2004

Mr. Ken Johnson
Assistant City Attorney
City of Waco - Legal Services
P.O. Box 2570
Waco, Texas 76702-2570

OR2004-6224

Dear Mr. Johnson:

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# 205760.

The City of Waco (the "city") received a request for various categories of information concerning the training and qualifications of a named police officer's use of radar equipment, information concerning policies pertaining to radar use, and information concerning the type of radar equipment used by the officer and the calibration of the equipment. You state that the city is making some information available to the requestor. You claim that a portion of the requested information, specifically the Radar Test (the "test") is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you state, and provide documentation showing, that the city sought clarification from the requestor regarding that portion of her request concerning "officer notes." *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). Based on your representations, it does not appear that the city had received the requested clarification from the requestor regarding the officer notes as of the date that it requested a ruling from us. Accordingly, we conclude that the city need not respond to this request with regard to the officer notes, until it receives the requestor's clarification. We note, however, that when the city does receive the clarification, it must

seek a ruling from us before withholding from the requestor any information that may be responsive to this portion of the request. *See* Open Records Decision No. 663 (1999) (providing for tolling of ten business day deadline for requesting attorney general decision while governmental body awaits clarification).

Next, with regard to the remaining requested information, we must address your obligations under section 552.301 of the Government Code. You argue that, because the city sought clarification on one portion of the request, the ten business day time limit was tolled for all other portions of the request. We note however, that although section 552.222 tolls the deadlines for seeking a ruling from this office with regard to that portion of a request for which clarification is sought, section 552.222 does not relieve the city of its obligation to timely request a decision from the office in compliance with section 552.301 with regard to those portions of the request for which it does not seek clarification. Under section 552.301(b), a governmental body that wishes to withhold information from public disclosure must request a ruling from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. *See* Gov't Code § 552.301(a), (b). Within fifteen days of receiving the request, the governmental body must submit to this office (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. Gov't Code § 552.301(e)(1)(A)-(D). You state and the submitted documentation shows that the city received the request on April 27, 2004. As such, you were required to request a decision from the office and state the exceptions that apply by May 11, 2004. Further, you were required to submit the items required by section 552.301(e) by May 18, 2004. However, you did not request a ruling or submit the items required by section 552.301(e) until May 19, 2004. Based on the foregoing, we conclude that you failed to comply with section 552.301. Because you failed to comply with section 552.301, the requested information is presumed to be public information. Gov't Code § 552.302.

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). This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Section 552.122 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and it may be waived by the governmental body. Thus, section 552.122 does not provide a compelling reason to withhold information from the public. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). We find that the city has waived its claim under section 552.122 of the Government Code, and you may not withhold any portion of the submitted information

pursuant to this exception. As you make no other arguments against disclosure, the city must release the submitted 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); *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 black ink, appearing to read "Cary Grace", with a long horizontal flourish extending to the right.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/seg

Ref: ID# 205760

Enc. Submitted documents

c: Ms. Billie J. Baker
2505 Parklake Drive
Waco, Texas 76708
(w/o enclosures)