ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2004

Mr. Steven D. Monté
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2004-10210

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 213912.

The Dallas Police Department (the "department") received a request for the personnel files of two named police officers, including all documents relating to commendations and disciplinary actions. You inform us that the department will release some of the requested information. You claim that other responsive information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code.

In this instance, the department has not complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes the 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.

As of the date of this decision, this office has not received any of the information, or a representative sample of any information, that the department seeks to withhold. Therefore, the rest of the requested information is presumed to be public and must be released, unless there is a compelling reason to withhold any of the information. *Id.; see also 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 Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The applicability of sections 552.101, 552.117, and 552.130 can provide compelling reasons for non-disclosure under section 552.302. However, you have not submitted any of the information, or a representative sample of any information, that you claim is protected by these exceptions, and thus we have no basis to conclude that there is any compelling reason to withhold any of the information under sections 552.101, 552.117, or 552.130. Therefore, we have no choice but to order you to release the rest of the requested information. If you believe that any of the 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

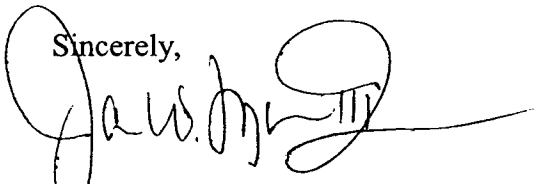
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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# 213912

c: Mr. Barry McGee
Attorney at Law
100 Crescent Court, 7th Floor
Dallas, Texas 75201
(w/o enclosures)