



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2005

Ms. Meredith Ladd
Brown & Hoffmeister
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2005-01020

Dear Ms. Ladd:

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# 217999.

The City of McKinney (the "city"), which you represent, received a request for a "list of commercial fire alarm projects issued a permit [during a specified time interval], including address, owner, fire alarm company and valuation." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

As an initial matter, we note that you did not submit any information pertaining to alarm "valuation" as requested. Therefore, we assume that, to the extent such information existed when the city received this request, the city has released it; if not, the city must do so at this time. *See Gov't Code §§ 552.301(a), 552.302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).*

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988).* This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Next, you acknowledge, and we agree, that the city did not fully comply with the requirements of section 552.301 of the Government Code in seeking this open records decision. Pursuant to section 552.301(b), a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(a), (b). Within fifteen business days of receiving the request, the governmental body must submit to this office (1) 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. *Id.* § 552.301(e)(1)(A)-(D). Although the city received the request for information on October 25, 2004, you did not request a decision from this office or submit any of the required information until November 22, 2004. Thus, the city failed to comply with the procedural requirements of section 552.301. The city's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ). In order to overcome this presumption, the city must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. Since the applicability of section 552.101 can provide a compelling reason to withhold information from disclosure, we will address your arguments.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Section 1702.284 of the Occupations Code provides:

Information contained in alarm systems records maintained by a governmental body that concerns the location of an alarm system, the name of the occupant of an alarm system location, or the type of alarm system used is confidential and may be disclosed only to the [Texas Commission on Private Security] or as otherwise required by state law or court order.

Occ. Code § 1702.284. The documents you have submitted as responsive to the request consist of alarm permits and related information. We note that the submitted documents contain information concerning the locations of alarm systems and the names of occupants of alarm system locations. We agree that this information is confidential pursuant to section 1702.284 of the Occupations Code. Thus, we determine the city must withhold the information we have marked pursuant to section 552.101 of the Government Code. You also claim that the names of the fire alarm companies are confidential under section 1702.284. We note, however, that this provision only protects the location of an alarm system, the name of the occupant of an alarm system location, and the type of alarm system. Since section 1702.284 does not protect the names of the fire alarm companies, we conclude that this information must be released.

Lastly, although you also raise section 1702.284 for the remaining information, the requestor has specifically asked only for permit holder names and addresses, alarm company names and valuations. As the remaining information is not responsive to the instant request, the city need not release this information to the requestor.

In summary, to the extent that records pertaining to alarm "valuation" exist, those records must be released to the requestor. The city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 1702.284 of the Occupations Code. The city must release the marked names of fire alarm companies. The remaining submitted information is not responsive to this request for information and need not be released.

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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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 ten calendar days of the date of this ruling.

Sincerely,


Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/sdk

Ref: ID# 217999

Enc: Submitted documents

c: Mr. Michael Long
Specialized Systems Inc.
4100 Eldorado Parkway, Suite 100
McKinney, Texas 75070
(w/o enclosures)