



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 10, 2005

Ms. Jerris Penrod Mapes  
Assistant City Attorney  
City of Killeen  
402 North Second Street  
Killeen, Texas 76541-5298

OR2005-05122

Dear Ms. Mapes:

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# 227327.

The City of Killeen (the "city") received a request for the city's pursuit policy. You inform us that the city has released some of the requested information. You claim that the rest of the requested information is excepted from disclosure under section 552.108 of the Government Code. You also assert that there are other compelling reasons to withhold the remaining information. We have considered your arguments and have reviewed the information you submitted. We also have considered the correspondence that we received from the requestor's employer and the employer's attorney. *See Gov't Code § 552.304* (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Initially, we address the city's obligations under section 552.301 of the Government Code. This section prescribes the procedures that must be followed 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 552.302 provides that 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; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

You inform us that the city received the present request for information on April 11, 2005. The date of your request for this decision – April 28, 2005 – was beyond the city’s ten-business-day deadline under section 552.301(b). Therefore, the submitted information is presumed to be public under section 552.302 and must be released, unless there is a compelling reason to withhold any of the information. The presumption that information is public under section 552.302 can generally be overcome by a demonstration that the information is confidential by law or that third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).

Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See* Gov’t Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). The city’s claim under section 552.108 does not present a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). In failing to comply with section 552.301 in requesting this decision, the city has waived section 552.108. We note that the law enforcement interests of another governmental body under section 552.108 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 3 (1991). You do not indicate, however, that any other governmental body has a law enforcement interest in the information at issue. Therefore, the city may not withhold any of the requested information under section 552.108.

You also contend that section 38.15 of the Penal Code provides compelling reasons to withhold the remaining information. Section 38.15, “Interference With Public Duties,” provides in part:

(a) A person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with:

(1) a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law;

(2) a person who is employed to provide emergency medical services including the transportation of ill or injured persons while the person is performing that duty;

- (3) a fire fighter, while the fire fighter is fighting a fire or investigating the cause of a fire;
- (4) an animal under the supervision of a peace officer, corrections officer, or jailer, if the person knows the animal is being used for law enforcement, corrections, prison or jail security, or investigative purposes; or
- (5) the transmission of a communication over a citizen's band radio channel, the purpose of which communication is to inform or inquire about an emergency.

Penal Code § 38.15(a). You contend that the release of the submitted information would “cause Interference With Public Duties in that it would directly interfere with the apprehension of suspects who choose to evade.” You also state that “[t]he city is genuinely concerned with safety concerns that are created by releasing this policy.”

As a general rule, the statutory presumption under section 552.302 that information is public may be overcome when the information is confidential under some source of law outside the Act, so as to be excepted from disclosure under section 552.101 of the Government Code, or where the interest of a third party is at stake.<sup>1</sup> *See* Open Records Decision No. 630 at 3 (1994). Section 38.15 of the Penal Code does not make information confidential by law for the purposes of section 552.101. *See* Open Records Decision Nos. 658 at 4 (1998) (for purposes of Gov't Code § 552.101, statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public). You have not otherwise shown how or why section 38.15 would provide any compelling reason to withhold any of the information at issue from the public. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Therefore, having considered your arguments and reviewed the information in question, we conclude that the city must release the remaining information in its entirety.

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

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<sup>1</sup>Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101.

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).

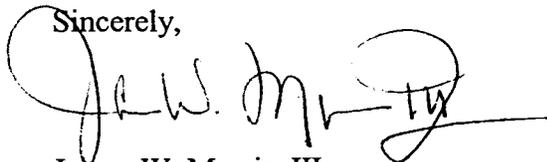
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "W".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 227327

Enc: Submitted documents

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