

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



ATTORNEY GENERAL OF TEXAS
G R E G A B B O T T

July 7, 2005

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2005-05995

Dear Ms. Sims:

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# 227696.

The Lubbock Police Department (the "department") received a request for "a copy of all personnel files, including letters of reprimand, for [two named officers], especially in regards to the investigation of [a specific] accident." You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (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. The department did not, however, submit arguments to this office explaining the applicability of its claimed exceptions nor did it submit a copy or representative samples of the information at issue. Thus, the department has failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling

reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Although the department raises section 552.108 of the Government Code, the department in this instance has not demonstrated a compelling interest under this exception that would allow the requested information to be withheld from disclosure. *But 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). Accordingly, we conclude that the department may not withhold any portion of the requested information under section 552.108 of the Government Code. Additionally, the department claims sections 552.101, 552.117, and 552.1175 of the Government Code as exceptions to disclosure. These exceptions can provide compelling reasons for overcoming the presumption of openness. *See* Open Records Decision No. 150 at 2 (1977). However, because you have not submitted the requested information, we have no basis for finding it confidential. Thus, we have no choice but to order the information released per section 552.302. *But see* Open Records Decision No. 670 (2001) (stating that governmental body may withhold peace officer's personal information from disclosure under section 552.117(a)(2) without necessity of requesting decision on that information from attorney general); *see also* Open Records Decision No. 673 (2001) (discussing types of previous determinations issued by this office). If you believe the information is confidential and may not lawfully be released, you must challenge the 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

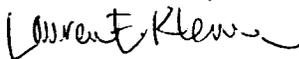
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 227696

c: Ms. Jennifer Vogel
KCBD NewsChannel 11
5600 Avenue A
Lubbock, Texas 79404

Filed in The District Court
of Travis County, Texas
on 12-19-05
at 1:52 p M.
Amalia Rodriguez-Mendoza Clerk

CAUSE NO. GV5-03342

CITY OF LUBBOCK, TEXAS ,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
V.	§	
	§	TRAVIS COUNTY, TEXAS
GREG ABBOTT, ATTORNEY GENERAL	§	
OF TEXAS,	§	
Defendant.	§	53 rd JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for an agreed final judgment. Plaintiff City of Lubbock, Texas and Defendant Greg Abbott, Attorney General of Texas, appeared by and through their respective attorneys and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor, Jennifer Vogel, was sent reasonable notice of this setting and of the parties' agreement that the City must withhold the information at issue; that the requestor was also informed of her right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of her intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The Lubbock Police Department's personnel file of Terry Boyer, as requested by Ms. Vogel, is confidential by Tex. Loc. Gov't Code § 143.089(g), and thus, excepted from disclosure by

Tex. Gov't Code § 552.101.

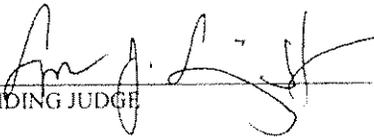
2. The City shall not release to the requestor the Lubbock Police Department's personnel file of Terry Boyer, as requested by Ms. Vogel.

3. All costs of court are taxed against the parties incurring the same;

4. All relief not expressly granted is denied; and

5. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 19th day of December, 2005.

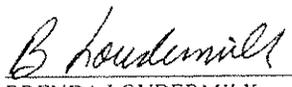


PRESIDING JUDGE

APPROVED:



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