



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 20, 2005

Ms. Kathleen Barina  
Deputy City Attorney  
City of Temple  
2 North Main Street  
Temple, Texas 76501

OR2005-06446

Dear Ms. Barina:

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# 228642.

The Temple Police Department (the "department") received a request for all reports regarding a specific incident and all policies relating to the use of force and restraints by the department in effect on January 10, 2005. You state that you will release some of the requested information, but claim that the remaining information is excepted from disclosure under section 552.108 of the Government Code.

In this instance, however, 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 requested information 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.*

You state that the department received the present request for information on April 20, 2005. However, you did not request a ruling until May 16, 2005. You state that the requestor voluntarily agreed to extend the time for the department to collect the information and comply with the Act. However, the deadlines contained in section 552.301 are fixed by statute and cannot be altered by agreement. *See* Open Records Decision No. 541 at 3 (1990) (“[T]he obligations of a governmental body under the [predecessor to the Act] cannot be compromised simply by its decision to enter into a contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision No. 514 (1988).”). *But see* Gov’t Code § 552.221(d) (allowing a governmental body that does not seek to withhold responsive information from disclosure to negotiate with the requestor the date and hour the information will be made available). Thus, you did not request a decision and state the exception you claim within the ten-business-day period prescribed by section 552.301(b). Furthermore, you have failed to submit the information that you seek to withhold, or a representative sample of the information, as prescribed by section 552.301(e)(1)(D). Therefore, the requested information is presumed to be public and must be released, unless there is a compelling reason to withhold any of the information. *See* Gov’t Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. — Austin 1990, no writ). A compelling reason exists when the information is confidential by other law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.108 is a discretionary exception to disclosure that protects a governmental body’s interests and is generally waived by the governmental body’s failure to comply with section 552.301 of the Government Code. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, you must release the remaining requested information in accordance with section 552.302 of the Government Code.

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).

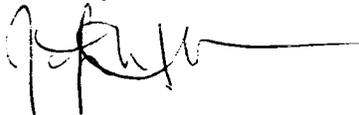
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/krl

Ref: ID# 228642

Enc. Submitted documents

c: Jeff Edwards  
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