



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 15, 2006

Mr. Jason L. Mathis  
Cowles & Thompson, P.C.  
901 Main Street, Suite 4000  
Dallas, Texas 75202-3793

OR2006-01494

Dear Mr. Mathis:

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# 242665.

The Addison Police Department (the "department"), which you represent, received a request for the following:

- (1) Use of Force reports documenting the use of any weapon, including Tasers, stun guns, and bean bag shotguns, by any member of the department since January 1, 2000.
- (2) Reports documenting the circumstances under which members of the department came into contact with any person on whom a weapon was used since January 1, 2000.
- (3) Custodial death reports filed by or on behalf of the department documenting the death of any person in custody on whom a weapon was used since January 1, 2000.
- (4) Reports of training injuries sustained by members of the department involving weapons, including Tasers, stun guns, and bean bag shotguns.

(5) Any policies regarding the department's use of force, including force involving Tasers, stun guns, and bean bag shotguns.

We understand you to assert that the requestor has withdrawn her request by operation of law. *See* Gov't Code § 552.2615. You also claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.111, and 552.117 of the Government Code.<sup>1</sup> We have considered your arguments.

We must first address the department's procedural obligations under section 552.2615 of the Government Code. Section 552.2615 provides in part:

(a) If a request for a copy of public information will result in the imposition of a charge under this subchapter that exceeds \$40 . . . the governmental body shall provide the requestor with a written itemized statement that details all estimated charges that will be imposed, including any allowable charges for labor or personnel costs.

Gov't Code § 552.6215(a). Section 552.6215(b) provides that:

A request . . . is considered to have been withdrawn by the requestor if the requestor does not respond in writing to the itemized statement by informing the governmental body within 10 business days after the date the statement is sent to the requestor that

- (1) the requestor will accept the estimated charges;
- (2) the requestor is modifying the request in response to the itemized statement; or
- (3) the requestor has sent the attorney general a complaint alleging that the requestor has been overcharged for being provided with a copy of the public information.

*Id.* § 552.2615(b). You claim that the department is "under no obligation to produce or copy any documents until [the department] receive[s] confirmation that the requested information will be paid for by the requestor." However, you informed this office that the department has not provided the requestor with an itemized estimate of charges under section 552.2615. We

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<sup>1</sup>Although you raise section 552.024 of the Government Code, we note that section 552.024 is not an exception to public disclosure under chapter 552 of the Government Code. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024.

therefore find that the department has failed to fulfill its obligations under section 552.2615, and that the requestor's request is not withdrawn.

We next address the department's procedural obligations under section 552.301 of the Government Code. Section 552.301 prescribes procedures that must be followed in asking this office to decide whether requested information is excepted from public disclosure. 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 a written request for information, (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 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 if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). Section 552.302 provides that if a governmental body does not submit the information 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.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

As of the date of this decision, this office has not received any arguments in support of the exceptions you claim or any of the requested information that you seek to withhold or a representative sample of the information. Therefore, as you have not complied with section 552.301 in requesting this decision, the requested information is presumed to be public and must be released under section 552.302, 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 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).

Sections 552.108 and 552.111 of the Government Code are discretionary exceptions to disclosure that protect 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), 470 at 7 (1987) (statutory predecessor to Gov't Code section 552.111 subject to waiver), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). In failing to comply with section 552.301, you have waived sections 552.108 and 552.111 and may not withhold any of the requested information under either exception. The applicability of sections 552.101, 552.102, and 552.117, which you also claim, can provide compelling reasons for non-disclosure under section 552.302. However, you have not submitted any information, or a representative sample of any information, that you seek to withhold under these exceptions, and thus we have no basis for concluding that there is any compelling reason to withhold any such information under section 552.101, section 552.102, or section 552.117. Therefore, we have no choice but to order you to release the requested

information under section 552.302. 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, 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); *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 Office of the Attorney General 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. 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 cursive script that reads "L. Joseph James".

L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/seg

Ref: ID# 242665

c: Ms. Martha Martinez, UTA  
c/o Light of Day Project  
Freedom of Information Foundation of Texas  
400 South Record Street, Suite 240  
Dallas, Texas 75202