



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 15, 2006

Mr. Randy A. Stoneroad  
Police Legal Advisor  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2006-02160

Dear Mr. Stoneroad:

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# 243585.

The Corpus Christi Police Department (the "department") received a request for police reports relating to incidents involving two named individuals, two locations, and two specified dates. You claim that some of the requested information is excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Initially, we address the department's obligations under section 552.301 of the Government Code. This section prescribes procedures that must be followed in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) provides that the governmental body must 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 fails to comply with 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 any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). 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).

You concede that the department failed to request this decision within the ten-business-day period prescribed by section 552.301. However, a claim under section 552.117 of the Government Code can provide a compelling reason for non-disclosure under section 552.302. Therefore, we will consider whether section 552.117 is applicable in this instance.

Section 552.117(a)(1) excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. You inform us that some of the submitted information relates to a former employee of the City of Corpus Christi who requested confidentiality for the information in question under section 552.024. We note, however, that the protections of section 552.117 are applicable only to information that a governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information held by their employers); *see also id.* § 552.024 (establishing election process for Gov't Code § 552.117). In this instance, the information at issue is contained in law enforcement records of criminal investigations. Because the department holds these records in its capacity as a law enforcement agency, rather than as an employer, the department may not withhold any of the submitted information under section 552.117 of the Government Code. As you claim no other exception to disclosure, all of the submitted information must 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 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 black ink, appearing to read "J.W. Morris, III", with a long horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 243585

Enc: Submitted documents

c: Mr. Gordon McMurdo  
17655 Henderson Pass #1318  
San Antonio, Texas 78232  
(w/o enclosures)