



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2007

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Garland
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2007-01679

Dear Ms. Graham:

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# 270928.

The Mesquite Police Department (the "department") received a request for information related to the department's pre-employment investigation of the requestor. You claim that the submitted investigation summary and records are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted records.

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. You state, and provide documentation supporting, that the requestor and the department agreed that information obtained by the department during its pre-employment investigation would remain confidential. However, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act without specific statutory authority to do so. Attorney General Opinion JM-672 (1987); 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."). In this instance, you have not provided us with the specific authority that allows you to make the submitted information

confidential by agreement. Thus, we presume no such authority exists. Accordingly, notwithstanding any agreement or statement specifying otherwise, the submitted records may not be withheld under section 552.101 and 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 "Justin D. Gordon". The signature is fluid and cursive, with a large, stylized "G" at the end.

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/sdk

Ref: ID# 270928

Enc. Submitted documents

c: Mr. James D. Burk
2322 Scotswood
Garland, Texas 75041
(w/o enclosures)