



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 7, 2007

Mr. Denis C. McElroy  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2007-07165

Dear Mr. McElroy:

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# 280364.

The City of Fort Worth (the "city") received a request for information regarding the city's employee insurance programs. You claim that the requested information is excepted from disclosure under sections 552.101 through 552.147 of the Government Code. We have considered the exceptions you claim.

We note that the city has failed to comply with section 552.301 of the Government Code. This section describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Pursuant to section 552.301(e), the governmental body must submit to this office, within fifteen business days of receiving the request, (1) 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. In this instance, the city failed to submit within the fifteen-business-day deadline written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld and a copy of the specific information requested

or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Thus, the city failed to comply with the requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists for withholding 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). Because you have failed to comply with the procedural requirements of the Act, the city has waived all of its discretionary exceptions to disclosure. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for a decision resulted in waiver of discretionary exceptions). Although the city also raises mandatory exceptions to disclosure, because you have not submitted the information for our review, we have no basis for finding it confidential. Thus, we have no choice but to order the requested information released per section 552.302. 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); *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 "A. Meesey". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Allan D. Meesey  
Assistant Attorney General  
Open Records Division

ADM/sdk

Ref: ID# 280364

c: Mr. Dick Strubbe  
4299 San Felipe Road, Suite 200  
Houston, Texas 77027