



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 6, 2007

Mr. Charles K. Eldred  
Assistant City Attorney  
Knight & Partners  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

OR2007-10032

Dear Mr. Eldred:

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# 285761.

The City of Manor (the "city"), which you represent, received a request for several categories of information pertaining to the use of city computers. You claim that the city does not maintain information responsive to three categories of information.<sup>1</sup> You assert that the requested IP addresses are not public information subject to the Act. You claim that the remaining requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we address your argument that IP addresses do not constitute public information for purposes of chapter 552 of the Government Code. In Open Records Decision No. 581 (1990), this office determined that certain computer information that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property, such as source codes, documentation information, and other computer programming, is not the kind of information made public under section 552.021 of the Government Code. Based on the reasoning in this decision and our review of the

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

information at issue, we determine that IP addresses do not constitute public information under section 552.002 of the Government Code. Accordingly, this information is not subject to the Act and need not be released.

Next, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301 of the Government Code, a governmental body has certain procedural obligations when it receives a written request for information that it wishes to withhold. Under section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general 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. Gov't Code § 552.301(e)(1)(A)-(D). You state that the city received the request for information on May 14, 2007. However, you did not provide this office with the required documents within the fifteen-business-day period mandated by section 552.301(e) of the Government Code.

We understand you to argue that, because the city provided the requestor with an estimate of charges for responding to the request and the city requires a deposit or bond in this instance, the city's deadlines under section 552.301 are tolled until the city receives the deposit or bond from the requestor. Thus, we understand you to argue that the city's deadlines under section 552.301 are tolled pursuant to section 552.263 of the Government Code. *See* Gov't Code § 552.263(e) (providing that for the purposes of Subchapters F and G of the Act, a request for a copy of public information is considered to have been received by a governmental body on the date the governmental body receives the deposit or bond for payment of anticipated costs). However, we note that section 552.263(a) provides in relevant part that a governmental body "may require a deposit or bond for payment of anticipated costs . . . if [the governmental body] has provided the requestor with the required *written itemized statement* detailing the estimated charge for providing the copy and if the charge" is estimated to exceed \$100, if the governmental body has more than 15 full-time employees or \$50, if the governmental body has fewer than 16 full-time employees. *Id.* § 552.263(a) (emphasis added). Thus, a governmental body may require a deposit or bond only if it has provided the requestor with the required written itemized statement. The requirements of the written itemized statement referred to in section 552.263 are found in section 552.2165 of the Government Code.

Section 552.2615 requires a governmental body to provide a requestor with an estimate of charges when a request to inspect a paper record will result in the imposition of a charge that will exceed forty dollars. *See id.* § 552.2615. Under section 552.2615, a governmental body is required to inform the requestor of the duties imposed on him by this section and provide the requestor the information needed to respond. *Id.* Section 552.2615 of the Government Code provides in part:

(a) [T]he governmental body must inform the requestor of the responsibilities imposed on the requestor by this section and of the rights granted by this entire section and give the requestor the information needed to respond, including:

(1) that the requestor must provide the governmental body with a mailing, facsimile transmission, or electronic mail address to receive the itemized statement and that it is the requestor's choice which type of address to provide;

(2) that the request is considered automatically withdrawn if the requestor does not respond in writing to the itemized statement and any updated itemized statement in the time and manner required by this section; and

(3) that the requestor may respond to the statement by delivering the written response to the governmental body by mail, in person, by facsimile transmission if the governmental body is capable of receiving documents transmitted in that manner, or by electronic mail if the governmental body has an electronic mail address.

(b) 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 days after the date the statement is sent to the requestor that

(1) the requestor will accept the estimated charge;

(2) the requestor is modifying the request in response to the itemized statement; or

(3) the requestor has sent to the attorney general a complaint alleging that the requestor has been overcharged for being provided with a copy of public information.

Gov't Code § 552.2615(a), (b). Although an unwillingness to accept the charges for providing information can constitute a withdrawal, we note, that in this instance the city did not inform the requestor of his rights and responsibilities under sections 552.2615(a) and (b). We therefore find that the city failed to meet the requirements of section 552.2615 in providing the required written itemized statement. Because the required written itemized statement was defective under section 552.2615, the city may not require a deposit or a bond of the requestor. Therefore, the city's deadlines under section 552.301 were not tolled under section 552.263. Furthermore, the provision of an itemized estimate of charges to a requestor under section 552.2615 does not excuse a governmental body from complying with its deadlines under section 552.301. *See* Gov't Code § 552.2615(g) (deadlines imposed by

section 552.2615 do not affect application of time deadline imposed on governmental body under subchapter G of the Government Code). Accordingly, the city's deadlines under section 552.301 were not tolled. The statutory deadline to submit the requested information pursuant to section 552.301(e) was June 5, 2007. However, the city has not submitted a copy or a representative sample of the responsive information. Accordingly, we conclude that the city failed to comply with section 552.301 in requesting this ruling.

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 information is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. Gov't Code § 552.302; *see also 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); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). The city asserts that the requested information is excepted from disclosure under section 552.103. Section 552.103 is a discretionary exception that does not overcome the presumption of openness. *See, e.g., Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to Gov't Code § 552.103 may be waived). Thus, the city may not withhold the information at issue under section 552.103. Moreover, because the city has not submitted any responsive information for our review, we have no basis for finding any of the requested information confidential. We therefore conclude that the city must release the information at issue to the requestor. 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,



M. Alan Akin  
Assistant Attorney General  
Open Records Division

MAA/jb

Ref: ID# 285761

Enc. Submitted documents

c: Mr. Juan Estevan Torrez  
16701 Trevin Cove  
Manor, Texas 78653  
(w/o enclosures)