



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 22, 2007

Mr. Peter G. Smith  
City of Richardson Attorney  
P.O. Box 831078  
Richardson, Texas 75083

OR2007-10840

Dear Mr. Smith:

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# 287414.

The Richardson Police Department (the "department") received a request for the following: (1) a list of every officer employed by the department; (2) a copy of the department's standard operating procedure, general orders, and/or methods of operation; (3) a list of any department officer reprimanded or subject to discipline over the last 5 years; and (4) the name of the department's highest ranking officer and the next two subordinate officers. You state that, upon receipt of payment, the department will release some of the requested information, but you claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to 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)*. The submitted copy of the request for information reflects that it was received by the department on May 29, 2007. However, the department did not request a ruling until June 18, 2007. Thus, the department failed to comply with the procedural requirements mandated by section 552.301.

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 the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). Although you claim exceptions to disclosure under section 552.108 of the Government Code, this section is a discretionary exception that protect a governmental body's interests and may be waived. *See Gov't Code* § 552.007; Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). *But see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). The department's claim under section 552.108 is not a compelling reason for non-disclosure under section 552.302. Therefore, the department has waived section 552.108 in failing to comply with section 552.301 and may not withhold any of the submitted information under section 552.108. As you claim no other exceptions to disclosure, the submitted information must be released to the requestor.

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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/eeg

Ref: ID# 287414

Enc. Submitted documents

c: Ms. Belinda Vela  
117 South Tennessee Street  
McKinney, Texas 75069  
(w/o enclosures)