



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 22, 2007

Mr. Daniel G. Rios  
City Attorney  
City of Edinburg  
P.O. Box 1079  
Edinburg, Texas 78540

OR2007-13778

Dear Mr. Rios:

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# 292474.

The City of Edinburg (the "city") received a request for a copy of the Edinburg Police Department Corporal's exam taken by a named individual. You claim that the requested information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit written comments regarding availability of information).

Initially, we note that you have not submitted any of the requested information for our review. You state that the information is "in the possession of the entity with whom the city contracts to administer [the exam]." Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *See Gov't Code § 552.002(a)*. Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns or has a right of access to the information and it relates to the transaction of official business. *See Open Records Decision Nos. 462 (1987), 445 (1986); cf. Open Records Decision No. 499 (1988)*.

In this case, you state that you have requested the information from the exam administrators and “will forward the [exam] to [our] office for [our] review, if necessary.” We note that the administrative inconvenience involved in responding to a request for information does not excuse a failure to comply with the Act. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (1976) (cost or difficulty of complying with the Act does not determine availability of information); Open Records Decision No. 497 (1988). Because the city has a right of access to the information and it relates to the transaction of official city business, we conclude that such information is subject to disclosure under the Act. Accordingly, we address the city’s obligations under the Act.

Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the 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. You state that the city received the request for information on August 2, 2007. As of this date, you have not submitted to this office the documents at issue. Thus, the city 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 Gov’t Code § 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). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.122 of the Government Code is a discretionary exception to disclosure that protects a governmental body’s interest and may be waived. *See* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Thus, because you have failed to comply with the procedural requirements of section 552.301, the city has waived its claim under section 552.122. Furthermore, because you have not submitted the information for our review, we have no basis to conclude that any of it is confidential. Accordingly, the requested 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,



Loan Hong-Turney  
Assistant Attorney General  
Open Records Division

LH/jb

Ref: ID# 292474

Enc. Submitted documents

c: Mr. David White  
819 Park Circle  
Edinburg, Texas 78539  
(w/o enclosures)