



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 15, 2008

Ms. Cara Leahy White
Taylor, Olson, Adkins, Sralla, & Elam
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2008-00715

Dear Ms. White:

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# 299595.

The City of Ovilla (the "city"), which you represent, received a request for all e-mails or other communications that were sent or received referencing a specified name or company. The requestor also seeks a list of names, phone numbers, and e-mail addresses of the individuals who sent or received these communications. The city states that the submitted information consists of a document that originated with the Garland Police Department (the "department"). You inform us that you notified the department of the request to provide the department with the opportunity to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.304 (permitting interested third party to submit reasons why information should be withheld). The department has briefed this office and claims that the submitted information is not responsive to the request. In the alternative, the department claims that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the department's arguments and reviewed the submitted information.

Initially, we address the department's contention that the submitted information is not responsive to the request for information. We note that a governmental body must make a good-faith effort to relate a request to information that it holds. *See* Open Records Decision No. 561 at (1990) (construing statutory predecessor). In this instance, the city has the responsibility to submit to our office information that it deems responsive to the request for information. The city has submitted information to our office. Additionally, the city does not argue that this information is not responsive to the request. Therefore, we find that the

city has made a good-faith effort to relate the request to the information the city maintains. Further, we find that the information the city submitted is responsive to the request because it is a communication that references the specified name. Thus, we will address the department's remaining argument against disclosure of the submitted information.

Next, the city acknowledges, and we agree, that it failed to comply with section 552.301 of the Government Code in seeking an open records decision from this office. 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) (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). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The law enforcement interests, under section 552.108 of the Government Code, of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991) (need of another governmental body to withhold information under statutory predecessor section 552.108 can provide compelling reason to overcome presumption of openness). In this instance, however, the department has failed to demonstrate a compelling law enforcement interest for non-disclosure under section 552.108(a)(2). Therefore, the city may not withhold the submitted information on behalf of the department. As no other arguments against disclosure of the submitted information have been raised, it 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

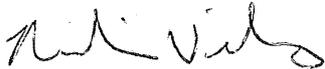
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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 challenge 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jb

Ref: ID# 299595

Enc. Submitted documents

c: Ms. Gail Skees
C&G Wholesale
10345 Brookwood Road
Dallas, Texas 75238
(w/o enclosures)

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002
(w/o enclosures)