



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 30, 2008

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston  
P. O. Box 1562  
Houston, Texas 77251-1562

OR2008-08794

Dear Ms. Chang:

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# 314722.

The City of Houston (the "city") received a request for the audio recording of a phone call for a specific complaint. You claim that a portion of the submitted information is excepted from disclosure under section 552.137 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you acknowledge that the city failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office. *See* Gov't Code § 552.301(b), (e). 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 and must be released. Gov't Code § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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 section 552.137 can provide a compelling reason to withhold information, we will address your argument under this section.

Section 552.137 of the Government Code exempts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). The e-mail address at issue does not appear to be of the type specifically excluded by section 552.137(c). You state that the individual at issue has not consented to the release of the e-mail address. Therefore, the city must withhold the e-mail address mentioned in the audio recording under section 552.137. If the city does not have the technology necessary to redact the e-mail address on the recording, then the city must withhold the entire recording under section 552.137 of the Government Code. Otherwise, the city must release the remaining portions of the audio recording 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 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). If the governmental body does not file suit over 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,

A handwritten signature in cursive script that reads "Bill Longley".

Bill Longley  
Assistant Attorney General  
Open Records Division

BL/eeg

Ref: ID# 314722

Enc. Submitted documents

c: Mr. Spence Kerrigan  
8623 Kempridge  
Houston, Texas 77080-4311  
(w/o enclosures)