



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2008

Ms. Doreen McGookey
City Attorney
City of Sherman
P.O. Box 1106
Sherman, Texas 75091-1106

OR2008-10694

Dear Ms. McGookey:

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# 318918.

The City of Sherman (the "city") received a request for the transcript of a 9-1-1 call made by the requestor's client. You claim the requested information is excepted from disclosure under sections 552.101 through 552.137 of the Government Code. We have considered the exceptions you claim.

We note the city has failed to comply with section 552.301(e) of the Government Code in requesting this decision. Section 552.301(e) provides that the governmental body must submit to this office, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why its claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. Gov't Code § 552.301(e)(1)(A)-(D). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold any of the information. *Id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when 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).

As of the date of this decision, this office has not received arguments in support of the exceptions to disclosure the city raises or any of the information or a representative sample of any information the city seeks to withhold. Thus, because the city has not complied with section 552.301(e) in requesting this decision, the requested information is presumed to be public under section 552.302. Because the city has failed to comply with the procedural requirements of the Act, the city has waived all of its discretionary exceptions to disclosure. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for a decision resulted in waiver of discretionary exceptions). Further, although the city also raises mandatory exceptions to disclosure, the city has not submitted the information for our review. Thus, we have no basis for finding it confidential, and we have no choice but to order the city to release the requested information. If you believe that any of the information is confidential and may not lawfully be released, you must challenge this 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 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,



Henisha D. Anderson
Assistant Attorney General
Open Records Division

HDA/mcf

Ref: ID# 318918

No Enclosures

c: Mr. Kenneth W. Roesler, P.C.
309 West Jones
Sherman, Texas 75090
(w/o enclosures)