



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2008

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

OR2008-14493

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# 326554.

The City of Sherman (the "city") received a request for a first-responder accident report. You claim that the requested information is excepted from disclosure under sections 552.101 through 552.137 of the Government Code.

Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(e) requires the governmental body to submit to this office, no later than the fifteenth business day after the date of its receipt of the request for information, (1) written comments in support of the governmental body's claimed exceptions to disclosure and (2) the specific information at issue or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A), (D). You state that the city received the present request for information on August 13, 2008. As of the date of this decision, you have not submitted to this office either any written comments in support of the exceptions the city claims or any information that the city seeks to withhold. Thus, the city has not complied with section 552.301 of the Government Code in requesting this decision.

If a governmental body fails to comply with section 552.301, the requested information is presumed to be public and must be released, unless there is a compelling reason to withhold

any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when 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 city's discretionary exceptions to disclosure are not compelling reasons for non-disclosure under section 552.302. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). In failing to comply with section 552.301, the city has waived the discretionary exceptions it claims and may not withhold any of the requested information under any of those exceptions. *See* Open Records Decision No. 663 at 5 (1999) (waiver of discretionary exceptions). The city also claims mandatory exceptions to disclosure. *See* Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions generally). But because the city has not submitted any of the requested information to this office, we have no basis to conclude that any of the information is confidential under any mandatory exception. Thus, we have no choice but to order you to release the requested information in accordance with section 552.302 of the Government Code. If you believe that 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).

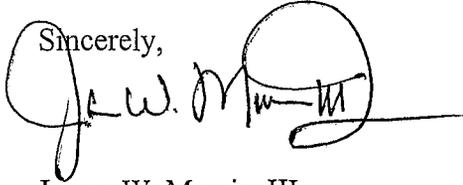
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a large circular flourish above the name and a horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jh

Ref: ID# 326554

c: Ms. Thelma B. Baber
831 West Shepherd
Denison, Texas 75020