



March 2, 2001

Mr. Richard L. Husen
Hook & Husen
P.O. Box 1089
Levelland,¹ Texas 79336

OR2001-0800

Dear Mr. Husen:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 144764.

The City of Levelland (the "city"), which you represent, received a request for "all discoverable materials in [the city's] information and investigatory files regarding [a specified] incident." The city claims that the requested information is excepted from disclosure under section 552.103 of the Government Code.

Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Under section 552.301(e), "[a] governmental body that requests an attorney general decision under Subsection (a) must . . . not later than the 15th business day after the date of receiving the written request . . . submit to the attorney general . . . a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested." Gov't Code § 552.301(e)(1)(D). Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302.

As you did not submit the requested information or representative samples of that information to this office, the city failed to comply with section 552.301 in requesting this decision.¹ A claim under section 552.103 of the Government Code does not constitute a compelling reason to withhold requested information. *See* Open Records Decision Nos. 630

¹Given the specificity of the requestor's letter and the city's admitted familiarity with the incident to which the request for information pertains, we do not find the request to be so vague or generalized as to prevent the city from identifying and submitting to this office information, or representative samples of information, that is responsive to the request.

at 3 (1994) (stating that operation of section 552.302 can be overcome by a demonstration that requested information is confidential by law or that interests of third parties are at stake), 325 at 2 (1982) (construing statutory predecessor to section 552.302). Furthermore, in the absence of the requested information, this office is unable to determine whether any compelling reason exists that would justify the withholding of any of that information from the requestor. Therefore, pursuant to section 552.302, the requested information 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 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).

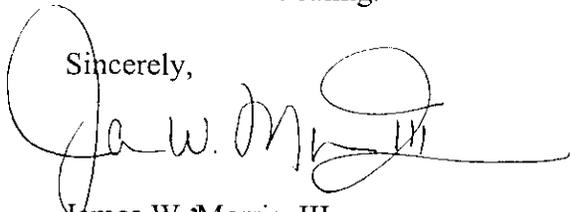
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public 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 General Services Commission 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 "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and "M".

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

JWM/er

Ref: ID# 144764

cc: Mr. David T. Bright
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