



March 7, 2001

Mr. William S. Helfand  
Magenheim, Bateman & Helfand  
3600 One Houston Center  
1221 McKinney Street  
Houston, Texas 77010

OR2001-0884

Dear Mr. Helfand:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144801.

The City of Frisco (the "city"), which you represent, received a written request for records pertaining to the city police department's shooting of an individual who was threatening to commit suicide. The requestor also wrote at the bottom of the city's request form "Also include an itemized inventory of everything that was in her car at the time of [the] incident." You contend that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.

We note at the outset that the requestor has complained to this office that the city did not request a decision from this office within the required ten business days following the city's receipt of the records request. *See* Gov't Code § 552.301(b). You acknowledge that "in November 2000" the city received the written request, which is dated November 2, 2000.<sup>1</sup> You further state that the city complied with the request for the inventory on

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<sup>1</sup>Under section 552.301(e)(1)(C) of the Government Code, the city is required to provide this office with "a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date." Without such a statement or evidence, the information at issue is presumed to be public and must be released absent a compelling reason for non-disclosure. Gov't Code § 552.302. However, we do not reach whether your representation quoted above comports with the requirement of section 552.301(e)(1)(C) because we resolve this request on other grounds.

December 15, 2000. You do not explain, however, why the city did not release the information requested in the first part of the request or why the city did not request a decision from this office in a timely manner.<sup>2</sup>

During the course of this office's investigation of the requestor's complaint, a city employee, Ms. Parker, explained to a member of our staff in a telephone conversation on December 20, 2000 that the city form the requestor completed to make his records request is an "old form." The form asks for the "Date of accident," the "Location of accident," and "One of the driver's name." The requestor completed each section of the form with pertinent information relating to the shooting incident. Ms. Parker further informed our staff member that the employee was aware of the information actually being requested and that she had the relevant incident report "in her hands." The requestor also informs this office by letter of December 15, 2000 that a police captain had made representations to the requestor on more than one occasion that a copy of the incident report would be released to him. Consequently, there is a question about the city's belief that the requestor was "newly" seeking an "accident report" or that the city did not have knowledge of the actual information being requested.

However, even if this office were to assume that the city did not fully understand that the requestor was seeking the incident report and its attachments, we nevertheless conclude that the city had the obligation to contact the requestor and clarify the nature of the request. A request for records made pursuant to the Public Information Act may not be disregarded simply because a citizen does not specify the exact documents he desires. When a requestor makes a vague request, the city should make a good faith effort to advise the requestor of the types of documents available so that the requestor may narrow or otherwise clarify the request. *See* Gov't Code § 552.222(b); Open Records Decision No. 87 (1975). It is clear to this office that the city should have recognized that the requestor was seeking information other than the requested inventory and that the city neither attempted to clarify the nature of the request with the requestor nor timely sought a decision from this office.

Section 552.301(a) of the Government Code requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold unless there has been a previous determination that the requested information is excepted from required public disclosure. When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. Gov't Code § 552.302; *see also Hancock*, 797 S.W.2d at 381.

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<sup>2</sup>Your initial correspondence to this office requesting an open records decision is dated December 29, 2000, more than ten business days following the city's receipt of the records request.

A compelling reason for withholding information is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Records Decision No. 150 (1977). Neither section 552.103 nor 552.108 is "other law" that makes information confidential. Because you raise sections 552.103 and 552.108 to protect only the interests of the city, and not those of a third party, these exceptions do not provide a compelling reason for withholding information presumed to be public in this instance. Consequently, the city may not withhold the incident report and its attachments pursuant to either section 552.103 or 552.108 of the Government Code.

We note, however, that some of the information at issue consists of criminal history record information ("CHRI"). The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 10-12 (1990). Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. The city therefore must withhold the CHRI contained in the records at issue.

Some of the records at issue consist of a custodial death report. Article 49.18(b) of the Code of Criminal Procedure requires that law enforcement agencies complete custodial death reports and file those reports with the attorney general, who "shall make the report, with the exception of any portion of the report that the attorney general determines is privileged, available to any interested party." In Open Records Decision No. 521 (1989) at 5, this office held that under article 49.18(b), in conjunction with a directive issued by the Office of the Attorney General, section one of custodial death reports filed with this office is public information. All remaining portions of the custodial death report, i.e. Parts II through V, including all attachments, are deemed privileged under article 49.18(b) and must be withheld from the public. Open Records Decision No. 521 at 5 (1989). Accordingly, the city must withhold all portions of Parts II through V of the custodial death report.

Finally, some of the records at issue contain the home address of city police officers. The city is required to withhold such information pursuant to section 552.117(2) of the Government Code. As noted above, the city must also withhold all CHRI and Parts II through V of the custodial death report. All remaining information must be released to the requestor in its entirety.

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).

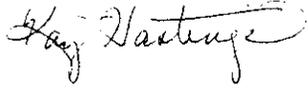
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 cursive script that reads "Kay Hastings". The signature is written in black ink and is positioned above the typed name.

Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/RWP/seg

Ref: ID# 144801

Encl. Submitted documents

cc: Mr. Lawrence R. Cousino  
206 Kiowa Drive East  
Lake Kiowa, Texas 75240  
(w/o enclosures)