



March 29, 2001

Mr. Stephen R. Alcorn
Assistant City Attorney
City of Grand Prairie
P.O. Box 534045
Grand Prairie, Texas 75053

OR2001-1260

Dear Mr. Alcorn:

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# 145426.

The City of Grand Prairie (the "city") received two separate requests for information. The first request, made on January 10, 2001, asks for the following information:

1. The entire personnel file of Officer Donald Allen;
2. Any and all documents related to and a part of the investigation that led to the decision to drug test Officer Allen;
3. Personnel and disciplinary files of current and former City of Grand Prairie law enforcement employees who were accused of illegal and/or unauthorized drug use;
4. The Department's policy for investigating unwritten allegations/rumors involving law enforcement officials; and
5. The names of law enforcement officials who were the subject of investigations initiated by unwritten allegations and/or rumors.

The second request, made on January 11, 2001, asks for the following information:

1. The entire personnel file of Sargent [sic] Keith Platt;
2. The entire personnel file of Officer Chris Moore;
3. The entire disciplinary file of Sargent [sic] Keith Platt;
4. The entire disciplinary file of Officer Chris Moore;
5. Copies of all investigations of police officers of the Grand Prairie Police Department who were placed on administrative leave, their badge, identification and weapon taken, restricted from performing off-duty work, and/or whom were denied access to the police department;
6. Any and all documents relating to the Department's policy and procedures of placing a police officer on administrative leave, taking the officer's badge, identification and weapon, denying the officer access to the police station, and restricting the officer from performing off-duty work;
7. Any and all documents relating to the criteria used by the Department to place a police officer on administrative leave, take the officer's badge, identification and weapon, deny the officer access to the police station, and restrict the officer from performing off-duty work; and
8. The disciplinary actions taken against all Grand Prairie police officers from January 1, 1998 to the present.

You state that the information responsive to item numbers 1, 2, and 4 of the first request and item numbers 1, 2, 6 and 7 of the second request has been released to the requestor. You state that there is no information responsive to item number 5 of the first request and item numbers 3 and 4 of the second request. In response to item number 3 of the first request and item number 8 of the second request, you have released a copy of the log of police investigations concerning complaints made against Grand Prairie police officers in an attempt to clarify and/or narrow those requests. *See* Gov't Code § 552.222(b) (governmental body may ask requestor to clarify the request or discuss how the scope of the request might be narrowed); *see also* Open Records Decision No. 563 (1990) (governmental body should advise requestor of types of information available so that he may narrow his request).

You claim that some of the requested information is excepted from disclosure under the law enforcement exception, which is found in section 552.108 of the Act, that some of the requested information is protected under the litigation exception, which is found in section 552.103 of the Act, and that some of the information is confidential under section 143.089 of the Local Government Code, which is encompassed by section 552.101

of the Act. We have considered your claimed exceptions and reviewed the submitted information. *See* Gov't Code § 552.306 (establishing attorney general's duty to determine whether information is within one of the Act's exceptions to disclosure).¹

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office any information that you wish to withhold. All of the submitted information appears to have been released to the requestor.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. 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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not shown such a compelling interest to overcome the presumption that the information at issue is public. Accordingly, you must release the requested information. We caution that the distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352.

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

¹You also claim that some of the requests are "argumentative" or "irrelevant." Please note that the Public Information Act prohibits a governmental body from inquiring into a requestor's reasons or motives for requesting information. *See* Gov't Code § 552.222(b) (stating that a governmental body may not inquire into the purpose for which information will be used). Thus, we do not address your stated concerns about the tone or the relevance of the above-listed requests. Such concerns are outside the scope of the rulings process under the Act.

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,



Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/seg

Ref: ID# 145426

Encl. Submitted documents

cc: Ms. Linda G. Sorrells
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(w/o enclosures)