



October 19, 2001

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

OR2001-4724

Dear Mr. Alcorn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153637.

The City of Grand Prairie (the "city") received a request for information generated by the city police department's investigator resulting from a background investigation in processing the requestor's application for employment. It appears from your arguments that you claim the requested information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.301 provides that a governmental body that receives a written request for information that it wishes to withhold from public disclosure must ask for a decision from the attorney general not later than the tenth business day after the date of receiving the written request. In addition, a governmental body is required to submit to this office within fifteen business days of receiving an open records request a signed statement or sufficient evidence showing the date the governmental body received the written request. Gov't Code § 552.301(e). You did not, however, submit to this office any evidence showing the date the governmental body received the written request. The request for information is dated July 24, 2001, and it appears that the city received the request on the same date. When a document is required to be submitted to this office, the requirement is met in a timely fashion if the document is sent by first class United States mail properly addressed with postage prepaid and either it bears a post office cancellation mark or the person furnishes satisfactory proof that it was deposited in the mail within the prescribed time period. Gov't Code § 552.308. The envelope containing the city's request for a decision shows no postmark and it shows insufficient postage. This office received the city's

request for a decision and the requested information on August 16, 2001, more than ten and fifteen business days after the city's receipt of the request for information. Because the city failed to comply with section 552.301, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); see Open Records Decision No. 630 (1994). The city claims that the information is excepted from public disclosure pursuant to Open Records Decision Nos. 565 (1990) and 466 (1987). These decisions concluded that employment references and employee evaluations are excepted under section 552.111 of the Government Code. Section 552.111 is not a compelling reason that overcomes the presumption that the information is public. Open Records Decision No. 473 (1987).<sup>1</sup> Thus, we conclude that the information must be released to the requestor.<sup>2</sup>

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

---

<sup>1</sup>Please note that the section 552.111 conclusions reached in Open Records Decision Nos. 565 and 466 have been overruled to the extent they conflict with Open Records Decision No. 615 (1993) (agency's policymaking functions do not encompass internal administrative or personnel matters).

<sup>2</sup>The information includes a social security number. Generally, a social security number is excepted from required public disclosure under the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994). Here, however, the requestor has a special right of access to his own social security number. Gov't Code § 552.023.

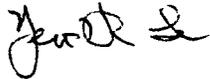
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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 Dept. 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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 153637

Enc. Submitted documents

c: Mr. Monroe M. Anderson, Jr.  
8165 Richmond Avenue, #1319  
Houston, Texas 77063  
(w/o enclosures)