



January 8, 2002

Ms. Cynthia B. Garcia  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2002-0120

Dear Ms. Garcia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157086.

The City of Fort Worth (the "city") received a request for all e-mail correspondence from certain named city council members to members of the police department since January 1, 2001. You indicate that the requestor modified her request to encompass only those communications with police personnel with the rank of sergeant or higher. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.107, 552.111, and 552.136 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

We begin by noting that you did not timely request a decision from this office. Subsections 552.301(a) and (b) provide:

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<sup>1</sup>Because you appear to seek to withhold only a portion of the requested information, we assume you have released any remaining responsive information. To the extent you have not released other responsive information, you must do so now. See Gov't Code §§ 552.021, .221, .301, .302.

<sup>2</sup>You indicate that a portion of the submitted information consists of representative samples of information. We assume that the "representative samples" of records submitted to this office are truly representative of the requested records at issue as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You indicate that the city received the request for information on October 12, 2001. Thus, the deadline for requesting a decision from this office was October 26, 2001. Furthermore, you do not indicate that this deadline was tolled for any reason. Nevertheless, the first correspondence submitted to this office was not post-marked until October 28, 2001. Therefore, we find that you did not request a decision within the ten-business-day period mandated by section 552.301(a) of the Government Code. Because the request for a decision was not timely received, 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). Generally, a compelling reason sufficient to overcome the section 552.302 presumption of openness exists only where the information is confidential by law or its release implicates third party interests. *See, e.g.*, Open Records Decision No. 150 (1977). You have raised section 552.101 of the Government Code<sup>3</sup> in conjunction with the informer's privilege. The informer's privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). Because the purpose of the informer's privilege is to protect the flow of information to a governmental body, rather than to protect a third person, the informer's privilege, unlike other claims under section 552.101 of the Government Code, can be waived. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the informer's privilege may not serve as a compelling reason for overcoming the presumption of openness under section 552.302. Likewise, sections 552.107 and 552.111 are discretionary exceptions and therefore do not provide compelling reasons for overcoming the presumption of openness under section 552.302. *See* Open Records Decision Nos. 473 at 2 (1987), 630 at 4-7 (1994). Nevertheless, section 552.136, pertaining to the confidentiality of certain e-mail addresses, is designed to protect the privacy interests of third parties and therefore may provide a compelling reason for overcoming the presumption of openness.

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<sup>3</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

Section 552.136, recently added to the Public Information Act by the Seventy-seventh Legislature,<sup>4</sup> provides that “[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Public Information Act].” Therefore, unless the relevant individuals have affirmatively consented to the release of their e-mail addresses, the city must withhold the e-mail addresses in the submitted information that we have marked under section 552.136. You must release the remainder of the submitted information.

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).

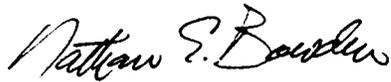
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<sup>4</sup>Act of May 22, 2001, 77<sup>th</sup> Leg., R.S., ch. 545, § 5, 2001 Tex. Gen. Laws 974, 975; *see also* Act of May 14, 2001, 77<sup>th</sup> Leg., R.S., ch. 356, § 1, 2001 Tex. Gen. Laws 614 (adding this exception as § 552.137).

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 Texas Building and Procurement 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,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 157086

Enc: Submitted documents

c: Ms. Deanna Boyd  
*Fort Worth Star Telegram*  
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(w/o enclosures)