



June 4, 2002

Mr. Nolan Greak
Greak & Smith, P.C.
8008 Slide Road, Suite 33
Lubbock, Texas 79424-2828

OR2002-3010

Dear Mr. Greak:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163858.

The City of Littlefield (the "city"), which you represent, received a request for a copy of a 911 call made to the city. You inform us that you have released a portion of the call to the requestor, but claim that a portion of the call is excepted from disclosure under section 552.101 of the Government Code in conjunction with the informer's privilege. We have considered the exception you claim and reviewed the submitted information.

We must first address a procedural matter. Section 552.301 of the Government Code dictates the procedure that a governmental body must follow when it seeks a decision from the attorney general as to whether requested information falls within an exception to disclosure. Among other requirements, the governmental body must submit to this office within fifteen business days of receipt of an information request a copy of the written request for information. Gov't Code § 552.301(e)(1)(B). Otherwise, the requested information "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. You did not submit to this office a copy of the request for information; consequently, the requested information is presumed to be public and must be released absent a compelling reason to withhold the information.

A compelling interest sufficient to overcome the presumption of openness may arise when some other source of law makes the information confidential or a third-party's interests are at stake. Open Records Decision No. 552 at 1 (1990). The informer's privilege is designed

to protect the government's interests, and thus, the existence of this privilege by itself does not demonstrate a compelling interest to withhold the information. Open Records Decision No. 549 (1990) (informer's privilege waivable). Therefore, because you have not presented this office with a compelling reason why the requested information should be withheld, the city must release the requested information to the requestor in its entirety.¹

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).

¹We note that the copy of the audio tape you submitted to this office for review was damaged, rendering it incapable of being played. The Public Information Act requires the city to provide the requestor with a suitable copy of the requested information. *See* Gov't Code § 552.228(a). Furthermore, as the requested information exists in a magnetic medium, the requestor is entitled to request a copy either on paper or on magnetic tape. Gov't Code § 552.228(b), (c) (setting forth circumstances under which governmental body must produce information in requested medium).

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 163858

Enc. Submitted documents

c: KLBK-TV
7403 University Avenue
Lubbock, Texas 79423
(w/o enclosures)