



July 8, 2002

Mr. Wyman Hopkins
Lieutenant Support Services
Rosenberg Police Department
2120 4th Street
Rosenberg, Texas 77471

OR2002-3669

Dear Mr. Hopkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165528.

The Rosenberg Police Department (the “department”) received a request for a copy of case number 02-9668. You state that you have provided the requestor with some responsive information. You claim, however, that the submitted information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

We note that section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See Gov’t Code § 552.301(b)*. You state that the department received the written request for information on April 17, 2002. Therefore, the department had until May 1, 2002 to request a decision from our office regarding the requested information. However, the department did not request a decision concerning the requested information until May 6, 2001, more than ten business days after the date that the department received the request. Accordingly, we conclude that the department failed to comply with the procedural requirements of section 552.301 of the Government Code. *See Gov’t Code § 552.301(b)*.

Because the department failed to request a decision within ten business days of receiving the request, the information at issue is presumed public. *See Gov’t Code § 552.302; see also*

Hancock v. State Bd. of Ins., 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The department must demonstrate a compelling interest to withhold the information in order to overcome this presumption. *See id.* Normally, a governmental body demonstrates a compelling interest by showing that some other source of law makes the information confidential or that the release of the requested information implicates third party interests. *See* Open Records Decision No. 150 at 2 (1977). Although the department claims that the information is excepted from disclosure under section 552.108 of the Government Code, we find that the department has not demonstrated a compelling interest under section 552.108 for withholding the information from disclosure. *See* Open Records Decision No. 586 (1991) (stating that need of governmental body, other than one that received written request, may constitute compelling reason to overcome presumption that information is public). Accordingly, the department may not withhold the information at issue from disclosure under section 552.108 of the Government Code. Consequently, the department must release the 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

¹ We note, however, that the information contains the social security number of the requestor. In this instance, the requestor has a special right of access to her own social security number. *See* Gov't Code § 552.023. However, because this social security number may be confidential with respect to the general public, we note that the department should again seek our decision, if it receives a further request for this information from an individual other than the requestor or her authorized representative.

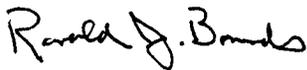
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may 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 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 165528

Enc. Submitted documents

cc: Ms. Stacey Torres
503 South Miller Road
Rosenberg, Texas 77471
(w/o enclosures)