

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



July 26, 2002

Ms. Barbara G. Heptig
Assistant City Attorney
City of Arlington
Post Office Box 1065
Arlington, Texas 76004-1065

OR2002-4103

Dear Ms. Heptig:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166446.

The City of Arlington (the "city") received a request for all records pertaining to a specified sexual harassment investigation. You state that approximately 300 pages of responsive information have been released to the requestor. You claim that a portion of the requested information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We begin by noting that you did not meet your burden under section 552.301 of the Government Code with respect to the request for information. Subsections 552.301(a) and (b) provide:

(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.

In this case, you provided us with ambiguous information regarding the date on which the city received the request for information. In your correspondence to this office, you refer to a May 10, 2002 letter from the requestor. While the request is date-stamped, the date is not entirely legible, showing only that the letter was marked "Received" on May 1_, 2002. Your request for a decision from this office was received on May 28, 2002. Because of the ambiguous information provided to this office, we find that the city has not adequately demonstrated that it requested a ruling from this office within the prescribed period. *See generally* Gov't Code § 552.301(e)(1)(C) (requiring governmental body to provide a signed statement as to the date the governmental body received the request). Consequently, we conclude that you failed to comply with the procedural requirements of section 552.301(a) in timely submitting a request for a decision from this office.

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 contend that the information at issue is excepted under section 552.107 of the Government Code. However, section 552.107 does not provide a compelling reason for withholding the requested information. *See* Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)); 473 at 2 (1987) (discretionary exceptions under the Public Information Act can be waived). Therefore, the submitted information must be released to the requestor in its entirety.

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).

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

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Ref: ID# 166446

Enc. Submitted documents

c: Ms. Jennifer C. Born
4805 Bonneville Drive
Arlington, Texas 76016
(w/o enclosures)

CAUSE NO. GV202600

CITY OF ARLINGTON
Plaintiff,

V.

GREG ABBOTT, ATTORNEY
GENERAL, STATE OF TEXAS,
Defendant.

§ IN THE DISTRICT COURT OF
§
§
§ TRAVIS COUNTY, TEXAS
§
§
§ 200th JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for entry of an agreed final judgment. The parties announce to the Court that all matters of fact and things in controversy between them have been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor was sent reasonable notice of this setting and of the parties' agreement that the City may withhold the information at issue; that the requestor was also informed of her right to intervene in the suit to contest the withholding of this information; and that the requestor, Jennifer C. Born, has not informed the parties of her intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

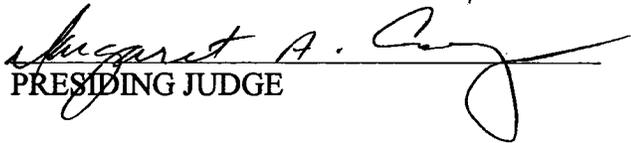
IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. the information at issue, specifically, the last sentence in the second paragraph under the entry: 9-17-01, on page 5 of Exhibit 2, that was submitted to the Attorney General by the City, is excepted from disclosure by Tex. Gov't Code §552.107(1).
2. The City of Arlington may withhold the information at issue from the requestor.

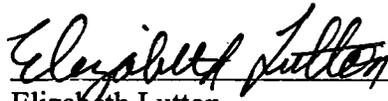
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DISTRICT CLERK
TRAVIS COUNTY, TEXAS

3. All costs of court are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

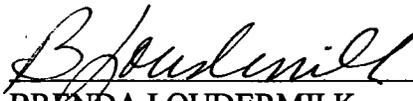
SIGNED this the 31 day of March, 2004.


PRESIDING JUDGE

APPROVED:



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