



August 14, 2002

Ms. Ruth Reyes
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2002-4474

Dear Ms. Reyes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167102.

You state that the City of El Paso (the "city") received a written request for "a complete copy of a pending criminal investigatory case." You state that some responsive information has been released to the requestor. You contend, however, that the remaining information coming within the scope of the request is excepted from required public disclosure pursuant to section 552.108 of the Government Code.

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 "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.

We did not receive a copy of the written request in either of your submissions to this office, nor have you provided this office with a "compelling" reason for withholding the information at issue. *See* Open Records Decision No. 150 (1977) (demonstration that information is made confidential by statute or comes under the protection of exception to disclosure intended to protect privacy interests constitutes compelling reason for non-disclosure). You have not provided a compelling reason under section 552.108 to overcome

the presumption of openness. *But see* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108). Moreover, we know of no other law that would make the submitted information confidential. We note that although the submitted records contain driver's license and motor vehicle information generally made confidential under section 552.130, in this instance the requestor has a special right of access to that information pursuant to section 552.023 of the Government Code. We therefore conclude that because you did not comply with the requirements of section 552.301(e)(1)(B), the requested information is presumed to be public and 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,



Kristen A. Bates
Assistant Attorney General
Open Records Division

KAB/RWP/sdk

Ref: ID# 167102

Enc: Submitted documents

c: Ms. Yolanda Dimery
432 Bird
El Paso, Texas 79922
(w/o enclosures)