OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

January 15, 2003

Mr. Kuruvilla Oommen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2003-0314

Dear Mr. Oommen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175017.

The City of Houston (the "city") received a request for "any files notes, reports, memos, written, electronic, and other medium, including photographs, video tapes, audio tapes currently being kept by the Houston Police Department CID division" regarding a named employee. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the requestor's comments and the exceptions you claim and reviewed the submitted information.

We must first address the city's obligations under section 552.301 of the Government. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Whether a submission is timely is determined by section 552.308, which provides in pertinent part:

> (a) When this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period . . . the requirement is met if the document is sent to the person by first class United States mail properly addressed with postage prepaid and:
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> > (1) it bears a post office cancellation mark indicating a time within that period; or

> (2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail within that period.

Gov't Code § 552.308(a). You state that the city received the present request on October 18, 2002. The requested information was submitted to this office along with a letter dated November 8, 2002, and was received by this office via Federal Express on November 12, 2002, which was seventeen business days after the date on which the city received the present request. As this submission was not received via United States mail and did not bear a post office cancellation mark indicating that it was mailed on or before November 8, 2002, we find that the city failed to submit the requested information for our review within the fifteen-business-day deadline set forth in section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *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 have not demonstrated a compelling reason to withhold the information under section 552.108, which protects law enforcement interests, and is a discretionary exception. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive section 552.108; 522 at 4 (1989) (discretionary exceptions in general). Neither does your claim pursuant to the common-law informer's privilege constitute such a compelling reason. *See* Open Records Decision No. 549 at 6 (1990) (governmental body may waive informer's privilege).

We note that you have raised the informer's privilege found in Rule 508 of the Texas Rules of Evidence. Rule 508 may only be claimed for documents subject to section 552.022 of the Government Code. You have failed to demonstrate how the documents you have submitted are subject to section 552.022. Therefore, Rule 508's informer's privilege is inapplicable in this instance. You have raised no other exception to the disclosure of this information. Therefore, you must release the information to the requestor.

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,

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 175017

Enc: Submitted documents

c: Mr. James E. Tippy
22703 Royal Arms Court
Katy, Texas 77449-5401
(w/o enclosures)