



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

January 22, 2003

Ms. Angela DeLuca  
Assistant City Attorney  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842

OR2003-0435

Dear Ms. DeLuca:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175308.

The College Station Police Department (the "department") received a request for electronic communications sent or received from computer-equipped patrol units during a particular time interval on October 11 and 12, 2002. The department claims that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you raise and have reviewed the submitted information.

Initially, we address the department's obligations under section 552.301 of the Government Code. 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. Along with your November 7, 2002 letter to this office, which requested a ruling from this office and raised specific exceptions to disclosure, you provided this office with a copy of the written request for information as Exhibit A, a signed statement showing the date the department received the written request as Exhibit B, and a copy of the specific information requested as

Exhibit C. However, although you state that your brief with respect to your claimed exceptions is attached to your November 7, 2002 letter as Exhibit D, you did not submit an Exhibit D with said letter. Thus, you did not submit comments stating the reasons why your claimed exceptions would allow the submitted information to be withheld from disclosure.

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). Section 552.103 is a discretionary exception under the Public Information Act and does not demonstrate a compelling reason to withhold information from the public. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App. Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Further, you have not demonstrated a compelling reason to withhold the information under section 552.108. *But see* Open Records Decision No. 586 (1991) (need of another governmental body to withhold information from disclosure provides compelling reason under section 552.108). Thus, the submitted information may not be withheld under sections 552.103 or 552.108. As section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address whether any of the submitted information must be withheld under section 552.101.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You have not directed our attention to any law, nor are we aware of any law, under which any of the information in question is considered to be confidential for purposes of section 552.101. *See, e.g.*, Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). Therefore, none of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Thus, the submitted information must be released to the requestor.

Finally, we note that you state that you have redacted information from the submitted documents pursuant to the previous determination granted in Open Records Decision No. 670. Open Records Decision No. 670 held that a governmental body may withhold information that is excepted from disclosure under section 552.117(2) without the necessity of requesting an attorney general decision. *See* Open Records Decision No. 670 at 6 (2001). The information you have redacted pertains to a peace officer's birthday. As section 552.117(2) does not except information regarding a peace officer's birthday, you must release the information you have redacted to the requestor.

To summarize, you must release the requested information in its entirety 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,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 175308

Enc: Submitted documents

c: Mr. Jim W. James  
Law Office of Jim James  
P.O. Box 1146  
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(w/o enclosures)