



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2003

Mr. Brian J. Begle
Olson & Olson
333 Clay Street, Suite 3485
Houston, Texas 77002

OR2003-8051

Dear Mr. Begle:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190670.

The City of Tomball (the "city"), which you represent, received a request for a videotape pertaining to the arrest of a named individual. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We must address the city's obligations under section 552.301(e) of the Government Code. Under section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the 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. You state that the city received the present request on August 21, 2003. Accordingly, the city was required to submit the information required under section 552.301(e) no later than September 12, 2003. As you acknowledge, you submitted the responsive videotape to this office on September 15, 2003. Thus, we find that the city has failed to comply with section 552.301(e) in requesting a decision from this office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of 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).

The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or that third party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.103 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived by the governmental body. Thus, section 552.103 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 generally). Section 552.108 is also a discretionary exception to disclosure. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108). However, the need of another governmental body to withhold information under section 552.108 can provide a compelling reason under section 552.302. *See* Open Records Decision No. 586 at 3 (1991). Although you raise section 552.108, your claim under this exception does not constitute a compelling reason to withhold the information in question. Thus, the submitted videotape may not be withheld pursuant to section 552.103 or section 552.108 of the Government Code.

We note that the submitted videotape contains an image of a Texas license plate number. Under section 552.130 of the Government Code, information relating to a motor vehicle title or registration issued by an agency of this state is excepted from public disclosure. Thus, the image of the license plate number on the submitted videotape is excepted from disclosure and must be withheld. If the city is unable to redact the license plate number, however, the city must withhold the portions of the videotape containing the image of the license plate in their entirety under section 552.130 of the Government Code. The remainder of the submitted videotape must be released 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 Dep't of Pub. 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 190670

Enc: Submitted documents

c: Mr. Thomas M. Roberson
2220 Brazo Street
Houston, Texas 77002
(w/o enclosures)