ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2003

Ms. Sara Hartin
Assistant City Attorney/Prosecutor
City of Killeen
101 North College
Killeen, Texas 76541

OR2003-9231

Dear Ms. Hartin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193146.

The City of Killeen (the "city") received a request for a video recording of a specified pre-trial hearing. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted information.

The Public Information Act (the "Act") applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). However, a "governmental body" under the Act "does not include the judiciary." Gov't Code § 552.003(1)(B). Information that is "collected, assembled or maintained by . . . the judiciary" is not subject to the Act but is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." Gov't Code § 552.0035(a); *see also* Tex. Sup. Ct. R. 12. In this instance, you do not demonstrate that the submitted information is held by the municipal court only. The city maintains a copy of the videotape. Therefore, we find that the submitted information does not constitute a record of the judiciary and is subject to the Act.

[1] We note that you raise section 552.003 of the Government Code as an exception to disclosure. Section 552.003 states in relevant part that, for the purposes of chapter 552, the definition of "governmental body" does not include the judiciary. Gov't Code § 552.003(1)(B). Thus, section 552.003 is not an exception to disclosure under the Public Information Act (the "Act").

Furthermore, the city is not a part of the judiciary. Thus, neither section 552.003 nor Rule 12 of the Rules of Judicial Administration is applicable.

We note that the submitted information is subject to required public disclosure under section 552.022(a) of the Government Code, which provides in relevant part:

> the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:
>
> . . .
>
> (17) information that is also contained in a public court record [.]

Gov't Code § 552.022(a)(17). The submitted videotape recording constitutes information that is contained in a public court record. Therefore, as prescribed by section 552.022, the city must release the submitted information unless it is confidential under other law. Section 552.103 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *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). Thus, the city may not withhold the submitted videotape recording under section 552.103 of the Government Code. As the city claims no other exceptions, the submitted information must be released.

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,

Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 193146

Enc. Submitted documents

c: Ms. Mary Beth Harrell
Harrell Law Office
201 East Avenue C
Killeen, Texas 76541-5230
(w/o enclosures)