



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

December 7, 2004

Ms. Julia Vasquez  
Senior Assistant Attorney  
City of Wichita Falls  
PO Box 1431  
Wichita Falls, Texas 76307

OR2004-10366

Dear Ms. Vasquez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 214304.

The City of Wichita Falls (the "city") received a request to inspect the complete personnel files pertaining to certain named and other city employees. You state that a portion of the responsive information has been made available to the requestor, but seek to withhold the remaining portion under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code. We have considered your arguments.

Initially, we note your assertion that the city sent a letter to the requestor seeking to clarify his request regarding information upon which you sought a ruling from this office. You state that the city additionally informed the requestor that the requested documents not subject to an exception would be made available for inspection at a certain date and time. You inform us that the requestor did not respond to the city's letter, that he did not appear at the requested date and time to review the requested documents, and he has not contacted the city about an extension of time to review the documents. On this basis, you state that the city considers the request to be withdrawn pursuant to section 552.225 of the Government Code.

Section 552.225 limits the time a member of the public may physically inspect public records. *See* Open Records Decision No. 512 (1988). This section does not, however, provide a basis for withdrawing the portion of a request for information that is subject to a request for a decision from this office. The only section of the Government Code that serves as a withdrawal by operation of law is section 552.2615, which provides that a request for a decision is considered to be withdrawn if the requestor does not respond in writing to an itemized statement sent by the governmental body to the requestor within ten days after the statement is sent. *See* Gov't Code § 552.2615. We therefore find that the requestor's request is not withdrawn in this instance.

We note, however, that if what information is requested is unclear, the governmental body may ask the requestor to clarify the request. *See* Gov't Code § 552.222(b). Because the requestor has not responded to the request for a clarification, the city need not respond to the portion of the request for which it sought a clarification. Should the requestor submit such a response, the department must seek a ruling from this office before withholding any responsive information from the requestor. *See also* Open Records Decision No. 663 (1999) (providing for tolling of ten business day time limit to request attorney general decision while governmental body awaits clarification).<sup>1</sup>

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

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<sup>1</sup>Based on this ruling, we need not reach your claimed exceptions to the release of the information potentially responsive to the request.

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); *Tex. 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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/jh

Ref: ID# 214304

c: Mr. Randall D. Kelton  
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