



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 25, 2005

Mr. David B. Casas  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2005-01674

Dear Mr. Casas:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 219251.

The City of San Antonio (the "city") received a request for information relating to the municipal integrity division, department, or committee. You claim that some of the requested information is excepted from disclosure under section 552.117 of the Government Code.<sup>1</sup> We note that the requestor also appears to have submitted a second request for information relating to radar manuals. As you have not requested a decision with regard to any information that would be responsive to the second request, we assume that the city has released any such information, to the extent that such information existed when the city received the second request. If not, then the city must release any such information at this

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<sup>1</sup>Although you also raise section 552.024, we note that the function of this section is to permit a current or former official or employee of a governmental body to restrict public access to his or her home address and telephone number, social security number, and family member information. See Gov't Code § 552.024(a).

time.<sup>2</sup> We note that the Act does not require the city to release information that did not exist when it received the second request or to create responsive information.<sup>3</sup>

We next note that the city has not complied with section 552.301 of the Government Code in requesting this decision. This section prescribes procedures that must be followed in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See id.* § 552.301(e)(1)(A)-(D). Section 552.302 provides that if a governmental body does not request an attorney general decision as prescribed by section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

As of the date of this decision, you have not submitted the information, or a representative sample of the information, that the city seeks to withhold under section 552.117. Thus, the city has not complied with section 552.301 in requesting this decision. Therefore, any information that is responsive to the request for information relating to the municipal integrity division, department, or committee is presumed to be public and must be released, unless there is a compelling reason to withhold any of the information. The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The applicability of section 552.117 of the Government Code can provide a compelling reason for non-disclosure under section 552.302. In this instance, however, you have not submitted any information that you claim is excepted from disclosure under section 552.117. Thus, we have no basis to conclude that there is any compelling reason to withhold any information under this exception. *But see* Open Records Decision No. 670 at 5-6 (2001) (governmental body may withhold peace

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<sup>2</sup>*See* Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

<sup>3</sup>*See* *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

officer's home address and telephone number, personal cell phone and pager numbers, social security number, and family member information under Gov't Code § 552.117(a)(2) without requesting attorney general decision). Therefore, we have no choice but to order you to release the requested information under section 552.302. If you believe that the information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

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).

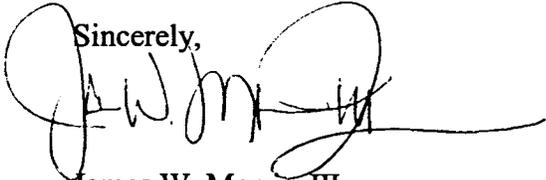
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 219251

c: Ms. Diana Casarez Minella  
Attorney at Law  
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San Antonio, Texas 78216