ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 20, 2006

Mr. Charles W. Rowland
City Attorney
City of Cedar Park
600 North Bell Boulevard
Cedar Park, Texas 78613

OR2006-13750

Dear Mr. Rowland:

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# 265052.

The City of Cedar Park (the "city") received a request for information pertaining to the investigation of a named municipal court clerk. You claim that the requested information is excepted from disclosure under sections 552.101, 552.107, and 552.108 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted information.

Initially, you acknowledge that the city failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office. *See* Gov't Code § 552.301(b), (e). 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 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 section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source

[1]You argue that a portion of the information is confidential pursuant to the attorney-client privilege. The proper exception to raise when claiming the attorney-client privilege is section 552.107 of the Government Code. Gov't Code § 552.107. Additionally, you argue that the identity of an individual who made complaints or reported instances of possible criminal activity is protected. The proper exception to raise for this information is section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Gov't Code § 552.101. Accordingly, we will consider your arguments under these sections.

of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Section 552.107 is a discretionary exception intended to protect only the interests of the governmental body. *See* Open Records Decision No. 676 at 11-12 (2002) (claim of attorney-client privilege under section 552.107 does not provide compelling reason for purposes of section 552.302); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Thus, the city's claim under section 552.107 does not provide a compelling reason for non-disclosure under section 552.302. We also understand you to raise section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Because the purpose of the informer's privilege is to protect the flow of information to a governmental body, rather than to protect a third person, the informer's privilege, unlike other claims under section 552.101 of the Government Code, can be waived. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the informer's privilege may not serve as a compelling reason for overcoming the presumption of openness under section 552.302, and the city may not withhold any portion of the requested information under section 552.101 of the Government Code on that basis. However, we note that the need of a governmental body, other than the agency that is seeking an open records decision, to withhold information under section 552.108 of the Government Code may be a compelling reason for non-disclosure. Open Records Decision No. 586 (1991).

Section 552.108 of the Government Code excepts from disclosure:

> (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:
>
> > (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

Gov't Code § 552.108(a). In this instance, you state that the Williamson County District Attorney's Office has advised that the disclosure of the requested information would interfere with the investigation and prosecution of a criminal case. Therefore, we agree that section 552.108(a)(1) applies to the requested information.

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Thus, the city must release the types of basic information listed in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). We note that the city has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

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).

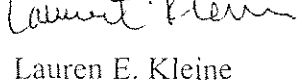
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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 Office of the Attorney General 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. 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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/eb

Ref: ID# 265052

Enc. Submitted documents

c: Ms. Katie Humphrey
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(w/o enclosures)