



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 26, 2007

Mr. Mark E. Sossi  
Attorney and Counselor  
Three North Park Plaza  
Brownsville, Texas 78521

OR2007-09481

Dear Mr. Sossi:

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# 285768.

The Brownsville Police Department (the "department"), which you represent, received two requests from the same requestor for information relating to two named police officers and a specified incident involving another named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that the submitted information does not pertain either to any of the individuals or to the incident that are the subjects of these requests for information. Thus, the submitted information is not responsive to these requests. This decision does not address the public availability of the submitted information, and that information need not be released.

We next note that the department has failed to comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e)(1)(D) requires a governmental body to submit to this office, not later than the fifteenth business day after the date of its receipt of the request, the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. See Gov't Code § 552.301(e)(1)(A)-(D). If a governmental body fails to comply with 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 any of 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, the department has not submitted to this office either any information that is responsive to these requests or a representative sample of any responsive information. Therefore, because the department has not complied with section 552.301 in requesting this decision, the requested information is presumed to be public under section 552.302. This statutory presumption 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). Section 552.103 of the Government Code, which the department claims, is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App. – Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). In failing to comply with section 552.301, the department has waived section 552.103 and may not withhold any of the requested information on the basis of that exception. The applicability of sections 552.101, 552.102, and 552.117 of the Government Code, which the department also claims, can provide compelling reasons for non-disclosure under section 552.302. However, because you have failed to submit any of the requested information for our review, we have no basis for concluding that there is any compelling reason to withhold any information under section 552.101, section 552.102, or section 552.117.

We note that the previous determination issued in Open Records Decision No. 670 (2001) authorizes the department to withhold the home addresses and telephone numbers, personal cellular phone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) without the necessity of requesting a decision under the Act.<sup>1</sup> *See* Open Records Decision No. 670 at 6 (2001); *see also* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (previous determinations). Otherwise, we have no choice but to order the department to release the requested information in accordance with section 552.302. If you believe that any of 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

---

<sup>1</sup>Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure.

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).

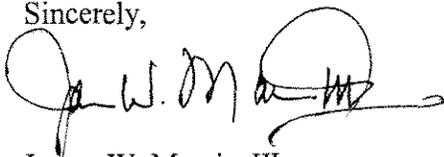
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in black ink, appearing to read 'James W. Morris, III', with a large, stylized flourish at the end.

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

JWM/ma

Ref: ID# 285768

Enc: Submitted documents

c: Mr. Eddie Lucio  
Law Office of Eddie Lucio  
810 East Van Buren  
Brownsville, Texas 78520  
(w/o enclosures)