



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 16, 2007

Ms. Jerris Penrod Mapes  
Assistant City Attorney  
City of Killeen  
402 North Second Street  
Killeen, Texas 76541-5298

OR2007-13546

Dear Ms. Mapes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 293288.

The Killeen Police Department (the “department”) received a request for “copies of all statements involved” in a certain case. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.<sup>1</sup>

Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act’s] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

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<sup>1</sup>We understand that the department submitted the first page of exhibit C for “reference only” and thus, that this page is not at issue.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). You state that the department received the request on August 9, 2007. We did not receive the department's request until August 27, 2007, and the postmark on the envelope of your request to this office is dated August 24, 2007, eleven business days after the department received the request. *See id.* § 552.308 (concerning timeliness of action by United States or interagency mail or common contract carrier). Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(b) of the Government Code. Because the request for a decision was not timely submitted, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). Your section 552.108 claim is not a compelling reasons to overcome the presumption that the information is public. *See* Open Records Decision No. 586 (1991). Thus, we conclude that the information must be released to the requestor.<sup>2</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).

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<sup>2</sup>We note that the information includes the requestor's social security number and Texas driver's license number. In the usual case, section 552.147 would permit the department to withhold the social security number, *see* Gov't Code. § 552.147, and section 552.130 would require the department to withhold the driver's license number, *see id.* § 552.130. However, since both numbers belong to the requestor here, those exceptions do not apply in this case. *See id.* § 552.023; Tex. Att'y Gen. Op. No. GA-519 (2007) at 8, n. 6. We advise the department to seek another ruling on these numbers in the event that it receives another request for this information.

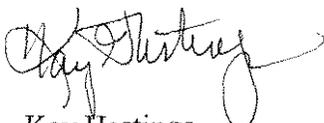
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/sdk

Ref: ID# 293288

Enc: Submitted documents

c: Ms. Jenifer Luquet  
1500 Bacon Ranch Road #1B  
Killeen, Texas 76542  
(w/o enclosures)