



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2007

Ms. Monique Sharp
Assistant General Manager
The Woodlands Fire Department
9951 Grogans Mill Road
The Woodlands, Texas 77380

OR2007-13901

Dear Ms. Sharp:

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# 292617.

The Woodlands Fire Department (the "department") received three requests for information pertaining to the department chief's golfing transactions.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.² We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the department's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental

¹As you have not submitted the original requests for information, we take our description from your brief.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the written request for information. *See id.* § 552.301(e)(1)(B). The department has not submitted a copy of the written request for information. Thus, the department failed to comply with the procedural requirements mandated by section 552.301.

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 requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). The applicability of sections 552.101, 552.117, and 552.136 of the Government Code can provide compelling reasons to overcome this presumption.

Next, the requestor asserts that the department has also failed to comply with the procedural requirements of the Act by failing to timely submit its request for a ruling and failing to submit an un-redacted copy of its comments to the requestor. *See Gov't Code* §§ 552.301(b), 301(e-1). However, upon review of the representations submitted by the requestor and the department, and review of the submitted information, we conclude that the department did not violate these procedural obligations under the Act and acted in good faith in responding to the request at issue.

Next we address the requestor's assertion that the requested information was previously released to the public and thus the department cannot now claim that this information is confidential. We note that sections 552.101, 552.117, and 552.136 are mandatory exceptions under the Public Information Act, and therefore are not waivable. *See id.* § 552.007 (voluntary disclosure of certain information is allowed, unless disclosure is expressly prohibited by law or the information is confidential under law); *see also* Open Records Decision No. 400 (1983) (prohibition against selective disclosure does not apply when governmental body releases confidential information to the public). Here, the department claims that a portion of the requested information is confidential under sections 552.101, 552.117, and 552.136 of the Government Code. Thus, even if the department previously released some of the requested information to the public, the department would nevertheless be required to withhold the information in this instance if it were found to be confidential. Therefore, we will address the department's arguments under these exceptions.

We note that the submitted invoices were previously ruled upon by this office in Open Records Letter No. 2007-13877 (2007). We also note that although the request in that ruling was originally sent to the Community Associations of the Woodlands, this office only received documents and arguments from the department. In Open Records Letter No. 2007-13877 we concluded that portions of the invoices must be withheld under

sections 552.101, 552.117, and 552.136. Since the law, facts, and circumstances surrounding this prior ruling have not changed, the department may continue to rely on Open Records Letter No. 2007-13877 as a previous determination and withhold the submitted invoices in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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,

A handwritten signature in black ink, appearing to read "Justin D. Gordon". The signature is fluid and cursive, with a large loop at the end of the last name.

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/jh

Ref: ID# 292617

Enc. Submitted documents

c: Mr. Foster McNair
135 East Mistybreeze Circle
The Woodlands, Texas 77381
(w/o enclosures)