



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 5, 2009

Mr. Joe Torres, III  
City of Alice  
216 North Texas Boulevard, Suite 2  
Alice, Texas 78332

OR2009-00021

Dear Mr. Torres:

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# 331303.

The City of Alice (the "city"), which you represent, received four requests from the same requestor for all complaints filed against two specific Alice Police Department officers, all requests for status made by the city regarding the investigation of the two named officers and the answers to such requests, and a specific notice of internal investigation served by the city fire chief.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in requesting a ruling from this office. Within fifteen business days of receiving the request, the governmental body must submit to this office (1) a copy of the request for information, (2) evidence showing the date the governmental body received the written request, (3) a copy of the specific information requested or representative samples thereof, labeled to indicate which exceptions apply to which parts of the documents, and (4) general written comments stating the reasons why the claimed exceptions apply. Gov't Code § 552.301(e)(1)(A)-(D).

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<sup>1</sup>As you have not submitted a copy of the requests, we take our description from the information you have submitted.

You explain that the city received the request for information on October 9, 2008. We timely received a portion of the required information from you on October 23, 2008. However, you did not send the witness affidavit dated October 8, 2005, until October 31, 2008. Furthermore, you have not submitted to this office a copy or copies of the written requests for information. Consequently, we find that the city failed to comply with the requirements of 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* Gov't Code § 552.302; *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 of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Sections 552.103 and 552.108 of the Government Code, which you assert, are discretionary exceptions to disclosure that protect a governmental body's interests and which may be waived. *See 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 section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). In failing to comply with section 552.301, the city has waived sections 552.103 and 552.108 and may not withhold any of the submitted information under these exceptions. You also claim that section 552.101 of the Government Code excepts two of the submitted documents from disclosure. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will consider whether this section requires you to withhold these two documents.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 143.089 of the Local Government Code. Section 143.089 governs two different types of personnel files, a police officer's civil service file that the city civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). We note, however, that section 143.089 applies only to civil service cities. You have not stated, and we find no indication that, Alice is a civil service city. Therefore, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code.

We note, however, that a portion of the submitted information is protected by common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which

protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that common-law privacy generally protects the identifying information of juvenile offenders. See Open Records Decision No. 394 (1983); cf. Fam. Code § 58.007. We have marked identifying information of a juvenile offender that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The remainder of the submitted information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

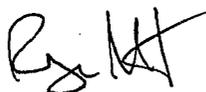
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Ryan T. Mitchell  
Assistant Attorney General  
Open Records Division

RTM/jb

Ref: ID# 331303

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)