



March 27, 2002

Mr. Leslie R. Sweet
Legal Advisor
Dallas County Sheriff Department
133 North Industrial Boulevard, LB 31
Dallas, Texas 75207-4313

OR2002-1518

Dear Mr. Sweet:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160398.

The Dallas County Sheriff's Department (the "department") received a request for information related to certain allegations made about a named employee and any disciplinary action taken as a result of those allegations. We understand you to claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

Initially, we note that subsections 552.301(a) and (b) of the Public Information Act 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.

(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). Additionally, section 552.301(e) provides that a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). This office did not receive the request for a decision within the ten business day period mandated by section 552.301(a) or a copy of the specific information requested or representative samples within the fifteen business day period mandated by section 552.301(e).

Because the department failed to comply with the procedural requirements of section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. You state, and the submitted documentation reflects, that you contacted the requestor in order to inform him of the cost of producing the requested information and to determine whether he wished the department to produce all of the information responsive to the request. *See* Gov't Code § 552.2615 (providing that governmental body shall provide requestor with estimate of charges if charges exceed \$40). Section 552.222(b) of the Government Code permits the governmental body to ask the requestor to clarify a request, if what information is requested is unclear to the governmental body. *See also* Open Records Decision No. 304 at 1 (1982). Section 552.222(b) also provides that if a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of the request might be narrowed. *See* Open Records Decision No. 87 at 3 (1975). You do not contend that the department was uncertain about what information was being requested or that it wished to discuss how the requestor might narrow the scope of his request. Furthermore, section 552.2615 of the Government Code provides that the submission of an estimate of charges to the requestor does not toll the governmental body's deadlines to ask for an attorney general decision under section 552.301. *See* Gov't Code § 552.2615(g) (providing that "[t]he time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G"); *see also* Open Records Decision No. 663 at 2-5 (1999) (addressing circumstances under which governmental body's communications with a requestor to clarify or narrow a request for information will toll ten-business-day deadline under section 552.301(b)). Thus, we do not find that you have presented a compelling reason for withholding the requested information.

Furthermore, because you have not submitted the information, or representative samples of the information, we have no basis for finding any of it confidential by law under section 552.101 of the Government Code. Thus, we have no choice but to order the requested information released under section 552.302. If you believe 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 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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).

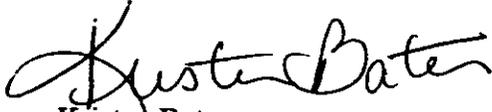
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 Texas Building and Procurement Commission 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. 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 that reads "Kristen Bates". The signature is written in a cursive, flowing style.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 160398

c: Mr. Jason B. Atchley
The Atchley Law Firm, P.C.
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