



July 17, 2002

Donna L. Clarke  
Assistant Criminal District Attorney  
Lubbock County - Civil Division  
P.O. Box 10536  
Lubbock, Texas 79408-3536

OR2002-3931

Dear Ms. Clarke:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165830.

The Lubbock County Sheriff's Office and Lubbock County Human Resources (the "county") received requests for information relating to a former employee of the sheriff's office. The county claims that some of the requested information is excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.

We first note that the county has not complied 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) provides in part:

(e) A governmental body that requests an attorney general decision . . . must . . . not later than the 15<sup>th</sup> business day after the date of receiving the written request [for information]:

(1) submit to the attorney general:

...

(B) a copy of the written request for information[.]

Gov't Code § 552.301(e)(1)(B). Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information."

As of the date of this decision, this office has not received copies of the requests for information. Thus, the county has not complied with section 552.301 in requesting this decision. Therefore, the requested information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of that information from the public. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ).

The presumption that information is public under section 552.302 can generally be overcome by a demonstration that the information is confidential by law or that third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. The county raises section 552.117, which can provide a compelling reason for non-disclosure under section 552.302. Therefore, we will address your claim.

Section 552.117(2) of the Government Code excepts from disclosure a peace officer's current and former home addresses and telephone numbers, the officer's social security number, and information that reveals whether the officer has family members, regardless of whether the officer has complied with section 552.024 of the Government Code. Section 552.117(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. You state that the requested information relates to a commissioned peace officer. Based on your representation, we have marked the information that the county must withhold under section 552.117(2).

We also note that the submitted information includes a Texas driver's license number. Section 552.130 of the Government Code excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). The county must withhold the Texas driver's license number, which we have marked, under section 552.130.

The submitted documents also contain information that comes within the scope of section 552.136, "Confidentiality of Credit Card, Debit Card, Charge Card, and Access Device Numbers." This exception, which the Seventy-seventh Legislature added to chapter 552 of the Government Code, provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We have marked the information that the county must withhold under section 552.136.

In summary, the county must withhold the peace officer's home address, home telephone number, social security number, and information that reveals whether the peace officer has family members under section 552.117 of the Government Code. The county must withhold the Texas driver's license number under section 552.130. The county also must withhold the information that is confidential under section 552.136. The county must release the rest of the requested information.

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).

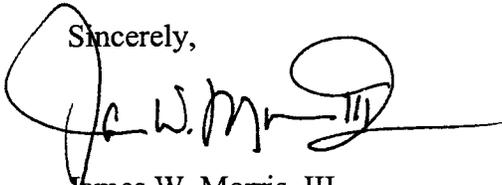
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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, appearing to read "J.W. Morris III", with a large, stylized flourish on the left side.

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

JWM/sdk

Ref: ID# 165830

Enc: Marked documents

c: Mr. Randy Sanders  
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(w/o enclosures)