



July 30, 2002

Ms. Allyson Mitchell
Assistant Criminal District Attorney
Anderson County
500 North Church Street
Palestine, Texas 75801

OR2002-4171

Dear Ms. Mitchell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166354.

The Anderson County Sheriff's Department (the "department") received a request for a complete list of occupants of the county jail on April 24, 2002. 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. We have also considered the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

Initially, we address the requestor's contention that the department failed to comply with section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Further, pursuant to section 552.301(e), 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. Although the department initially stated that it received the present request on May 3, 2002, subsequent correspondence and the actual request letter indicate that the department received the present request on May 10, 2002. As the department sought a decision from this office on May 21, 2002, and submitted the Anderson County Jail Daily Report ("daily report") for our review on May 23, 2002, we

find that the department did comply with the requirement of section 552.301 with respect to the submitted daily report. Thus, we will address the department's arguments against disclosure of that information.

We note, however, that the department did not submit a copy of the Anderson County Jail Census Report ("census report") for our review until June 26, 2002. Thus, the department failed to comply with the requirements of section 552.301(e) with respect to the census report. Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) within the fifteen-business-day deadline results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not demonstrated a compelling reason to withhold the census report under section 552.108. *But see* Open Records Decision No. 586 (1991) (need of another governmental body to withhold information from disclosure provides compelling reason under section 552.108). We note, however, that most of the information in the census report is not responsive to the current request. The request seeks a list of the occupants of the county jail on April 24, 2002. The census report contains the names of the inmates jailed in the county jail on April 24, 2002, along with other information regarding each inmate. Only the names of these inmates would be responsive to this request. As you raise no other exception with respect to the census report, the inmates' names within the census report must be released. The remaining information in the census report is not responsive to the present request and need not be released to the requestor.

We will now address your argument under section 552.108 with respect to the submitted daily report. Section 552.108 provides in pertinent part:

....

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b). Generally, a governmental body claiming section 552.108 must particularly demonstrate how and why release of the particular requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 3 (1986). You

state that the release of the daily reports would reveal how inmates are situated and housed within the unit, could be used in preparing for an escape, and may impair jail security. This office has concluded that section 552.108 excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (holding that section 552.108 excepts detailed guidelines regarding a police department's use of force policy), 508 (1988) (holding that release of dates of prison transfer could impair security), 413 (1984) (holding that section 552.108 excepts sketch showing security measures for execution). We agree that allowing the public to know how inmates are situated and housed within the county jail would interfere with law enforcement. *Cf.* Open Records Decision No. 508 (1988) (holding that disclosure of information relating to *past* transfers of inmates would not unduly interfere with law enforcement).

We note, however, that most of the information in the daily report is not responsive to the current request. The request seeks a list of the occupants of the county jail on April 24, 2002. The submitted daily report contains the names of the inmates jailed in the county jail on April 24, 2002, along with other information regarding each inmate. Only the names of these inmates would be responsive to this request. As to the responsive information, we conclude that you have not adequately demonstrated how its release to the public would interfere with law enforcement. Because you have not provided an adequate particularized explanation, you may not withhold the names of the inmates contained in the daily report public disclosure pursuant to section 552.108(b)(1) of the Government Code. Further, you have informed this office that the department has routinely been placing daily reports, which include the names of inmates, in the jail lobby. *See* Gov't Code § 552.007. Accordingly, you must release the names of the inmates confined in the county jail on April 24, 2002, from the submitted daily report. The remaining information in the daily report is not responsive to the present request and need not be released to the requestor.

To summarize, we conclude that the department must release the names of the inmates confined to the county jail on April 24, 2002, from the submitted census report and daily report. As the remaining information in the census report and daily report is not responsive to the present request, it need not be released to the requestor.

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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 166354

Enc: Submitted documents

c: Mr. Gerald Moore
The Clarion
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(w/o enclosures)