



August 16, 2002

Mr. R. Neel McDonald  
Assistant County Attorney  
Freestone County  
118 East Commerce, Room 305  
Fairfield, Texas 75840

OR2002-4523

Dear Mr. McDonald:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167237.

The Freestone County Sheriff's Office (the "sheriff"), which you represent, received a request for nine categories of information related to the arrest of a named individual. You state that some of the requested information will be made available to the requestor to the extent that it exists.<sup>1</sup> You claim that the submitted information is "not discoverable in a criminal case, nor . . . properly the subject of an Open Records Request." This office generally does not address discovery and evidentiary rules that may or may not be applicable to information submitted by a governmental body. *See* Open Records Decision No. 416 (1984) (finding that even if evidentiary rule specified that certain information may not be publicly released during trial, it would have no effect on disclosability under Act). Absent a court order compelling nondisclosure of particular information, what information can or cannot be introduced during trial and what information can or cannot be released to the public under the Act are two entirely different issues. *Id.* at 7.

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<sup>1</sup>The Public Information Act (the "Act") applies only to information in existence at the time it is requested. Accordingly, this office has concluded that the Act does not require a governmental body to prepare new information in response to a request. *See, e.g.,* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

You raise no specific exception to public disclosure of the information at issue. Subsections 552.301(a) and (b) of the Government Code 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) and (b). You also have failed to submit comments to this office in support of any exceptions to disclosure under the Act. *See id.* § 552.301(e)(1)(A). Because you have not complied with section 552.301 of the Government Code, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). You have not raised any specific compelling reasons to overcome the presumption that the information is public.

We note that the submitted information contains motor vehicle information which is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

The driver's license number, vehicle identification number, and license plate number of the requestor's client, as well as his social security number, are included among the submitted information. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990.

See Open Records Decision No. 622 (1994). We further note, however, that section 552.023 gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interest. Section 552.023 provides the requestor a special right of access to his client's driver's license, vehicle identification, license plate, and social security numbers. As you raise no other exception to disclosure of this information, the submitted information must be released to the requestor in its entirety.

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 cursive script, appearing to read "Cindy Nettles".

Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 167237

Enc. Submitted documents

c: Mr. José R. Villanueva  
601 Jester Street  
Coolidge, Texas 76635  
(w/o enclosures)