



September 3, 2002

Mr. John Feldt  
Assistant District Attorney  
County of Denton  
P.O. Box 2850  
Denton, Texas 76202

OR2002-4923

Dear Mr. Feldt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168025.

The Denton County District Attorney's Office (the "district attorney") received a request for the identity of any individual within the third degree of consanguinity to Mr. Eddie Gossage who is employed by the district attorney, the date of hire of such individual, the monthly amount of wages paid to any such individual, the gross amount paid as wages to any such individual, and a complete listing of the manner and type of payments other than wages made to any such individual. You claim that the requested information is not public information as defined under section 552.002 of the Public Information Act (the "Act"). You also claim that the requested information is excepted from disclosure under sections 552.003, 552.022, 552.101, 552.103, 552.117, and 552.305 of the Government Code.<sup>1</sup> We have considered the exceptions you claim. We have also considered the comments submitted by the requestor. *See Gov't Code § 552.304* (providing for submission of public comments).

At the outset, we address the requestor's contention that the district attorney failed to timely request a decision from this office. 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. The district attorney

---

<sup>1</sup>Please note that sections 552.003, 552.022, and 552.305 are not exceptions to the disclosure of information under the Act. Rather, section 552.003 provides definitions of certain terms, section 552.022 makes certain information expressly public unless its is confidential under other law, and section 552.305 permits a governmental body to rely on an interested third party to raise and explain the applicability of exceptions in certain circumstances. This office has not received any communication from an interested third party. Therefore, we need not address section 552.305 any further.

received the present request for information on June 14, 2002, and, therefore, had until June 28, 2002, to request a decision from this office. As the district attorney submitted its request for a decision from this office on June 26, 2002, the district attorney did in fact timely request a decision from this office. Thus, we will address the district attorney's arguments against disclosure.

Initially, you argue that it is unknown whether any district attorney employee is in fact related to Mr. Eddie Gossage within the third degree of consanguinity. You ask whether the district attorney is required to ask all of its 117 employees whether they are so related to Mr. Eddie Gossage. The Act does not require a governmental body to prepare answers to questions posed by a requestor or to do legal research. *See* Open Records Decision Nos. 563 at 8 (1990) (considering request for federal and state laws and regulations), 555 at 1-2 (1990) (considering request for answers to fact questions). Therefore, the district attorney is not required to investigate whether any of its employees are related to Mr. Eddie Gossage within the third degree of consanguinity in order to respond to the present request.

You do indicate that a known relative of Mr. Eddie Gossage, who is employed by Express Personnel Service, is currently completing a three month assignment in the Denton County Criminal District Attorney's Office Family Violence Division. You claim, however, that the requested information regarding this individual is not public information subject to the Act. Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987). You argue that the requested information is not subject to the Act because the information pertains to an individual who is employed by a third party, Express Personnel Services, and not by the district attorney. However, you do not state whether the district attorney has any responsive information regarding this individual, or whether the district attorney has a right of access to any such information. If the district attorney does not have any such information or a right of access to any such information in the possession of Express Personnel Services, we agree that the requested information would not be subject to disclosure under the Act. However, to the extent the district attorney has any responsive information regarding the individual employed by Express Personnel Services, or a right of access to any such information, such information would constitute public information subject to disclosure under the Act.

Assuming the district attorney possesses or has a right of access to responsive information regarding the individual, we must again address the district attorney's obligations under section 552.301. 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. You did not submit a copy of the specific information requested or representative samples of that information to this office.

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) 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). Section 552.103 is a discretionary exception under the Public Information Act and does not demonstrate a compelling reason to withhold information from the public. *See, e.g.*, Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Further, because you have not submitted the responsive information, we have no basis for determining whether a compelling reason exists for withholding it. Accordingly, you must release any responsive information in the district attorney's possession or to which the district attorney has access. We caution, however, that the distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352.

To summarize, we conclude that: (1) if the district attorney does not have any responsive information regarding the individual employed by Express Personnel Services, or a right of access to any such information in the possession of Express Personnel Services, we agree that the requested information would not be subject to disclosure under the Act; and (2) if the district attorney possesses or has a right of access to responsive information regarding the individual employed by Express Personnel Services, such information must 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# 168025

c: Mr. Chris Raesz  
Law Offices of Chris Raesz  
306 North Carrol Boulevard  
Denton, Texas 76201