OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

October 28, 2002

Mr. Terry Wilson
Attorney at Law
1201 Franklin, 6th Floor
Houston, Texas 77002

OR2002-6089

Dear Mr. Wilson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171283.

You received a request for certain phone records relating to Burleson County for the period beginning May 18, 1998, through August 23, 2001. You inform us that during that time you were appointed as Attorney Pro Tem for Burleson County to investigate and prosecute a particular criminal matter. You state that you no longer serve as the appointed Attorney Pro Tem for Burleson County and contend that you are not a "governmental body" subject to the Public Information Act (the "Act") for purposes of this request. You further state that you have no records responsive to this request in your possession. You claim that, should the Act apply to this request, the requested phone records are excepted from disclosure under sections 552.101, 552.108 and 117 of the Government Code. We have considered your comments and reviewed the submitted information.

The Act, chapter 552 of the Government Code, applies to requests for public information made to a governmental body. *See* Gov't Code § 552.021. 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." Under the Act, a "governmental body" is an entity that spends or is supported in whole or in part by public funds. "Public funds" means funds of the state or of a governmental subdivision of the state. Gov't Code § 552.003(5).

In this case, you inform us that you served as the appointed agent of Burleson County in connection with official county business, the investigation and prosecution of a particular criminal case. Generally, information relating to the transaction of official business by the agent of a governmental body is the public information of the governmental body. *See, e.g.* Open Records Decision No. 663 (1999) (information assembled by governmental body's private counsel to which the governmental body has access is public information subject to the Act). You state, however, that you received this request in your capacity as a private citizen at a time when you were no longer serving as the agent of Burleson County. Furthermore, you state that in your capacity as a private citizen you do not maintain or possess information responsive to this request. Thus, we determine that the request at issue was not made to a "governmental body" under the Act. We therefore conclude that the request for information at issue is not a valid request for public information under the Act. As we are able to make this determination, we do not address your arguments under the Act.

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).

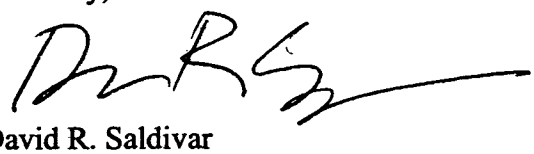
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 171283

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