



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

December 30, 2002

Mr. Robert A. Klaeger  
County Attorney  
Burnet County  
220 South Pierce  
Burnet, Texas 78611

OR2002-7410

Dear Mr. Klaeger:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173482.

The Burnet County Sheriff's Office (the "sheriff") received a request for copies of eleven categories of information pertaining to the sheriff's compliance with the law in executing the sale of the requestor's property. You state that you are unsure about what information is being sought by the requestor and you inquire about whether the sheriff must respond to the request. We have reviewed the submitted information.

Initially, we note that the Public Information Act (the "Act") requires that a governmental body that receives a written request for information must only make a good faith effort to relate that request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990). The Act only applies to information that is already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990). Further, the Act does not require a governmental body to prepare answers to questions posed by a requestor or to perform 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).

However, if what information is requested is unclear to the governmental body, the governmental body may ask the requestor to clarify the request. *See* Gov't Code § 552.222. This office has previously held that a request "must sufficiently identify the information requested and an agency may ask for a clarification if it cannot reasonably understand a particular request." Open Records Decision Nos. 663 at 4 (1999), 23 at 1-2 (1974); *see also* Open Records Decision No. 304 (1982). Further, if a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of the request might be narrowed, but the governmental body may not inquire into the purpose for which the information will be used. *See* Gov't Code § 552.222; *see also* Open Records Decision No. 31 (1974) (stating that when governmental bodies are presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). The purpose of section 552.222 is to authorize a dialogue between the governmental body and the requestor regarding the scope of the records request. *See* Open Records Decision No. 663 (1999).

When a governmental body seeks clarification or a narrowing of a request from a requestor the ten-business day deadline for requesting an attorney general decision regarding the requested information is tolled until the governmental body receives the requested clarification or narrowing of the request from the requestor. *See id.* However, if the requestor chooses not to clarify or narrow a request or if the governmental body chooses not to seek clarification or a narrowing of the request from a requestor, the governmental body must release all responsive information, unless an exception to disclosure applies to it. In that instance, the governmental body must request a ruling from our office regarding the requested information under section 552.301 of the Government Code for any information it seeks to withhold from disclosure. Since you inquire about whether the sheriff must respond to the request in this instance, we will address the procedural requirements of section 552.301 of the Government Code.

Pursuant to section 552.301(b) of the Government Code a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See* Gov't Code § 552.301(b). In addition, section 552.301(e) provides that a governmental body that requests an attorney general decision under section 552.301(a) must, within a reasonable time, but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general (1) 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 as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date; and (4) a copy of the specific information requested or representative samples of the information, if a voluminous amount of information was requested, labeled to indicate which exceptions apply to which parts of the information. *See* Gov't Code § 552.301(e). To date, the sheriff has not submitted any written comments

stating the reasons why any exception to disclosure would apply to the requested information, a signed statement as to the date on which the sheriff received the request or evidence sufficient to establish that date, or any portion of the requested information to us for our review. Therefore, we find that the sheriff has failed to comply with section 552.301 of the Government Code in requesting a decision from our office with regard to the requested information.

Because the sheriff failed to comply with the procedural requirements of section 552.301, the information at issue is now presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The sheriff must demonstrate a compelling interest in order to overcome the presumption that the requested information is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the requested information confidential or when third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because the sheriff did not submit a copy of any information that would be responsive to the request in this instance for our review, we have no basis for concluding that any of the information is excepted from disclosure under the Act or is otherwise confidential by law. Accordingly, we conclude that the sheriff must release the entirety of the requested information 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 173482

c: Mr. Paul W. Kimmell  
P. O. Box 1090  
Marble Falls, Texas 78654