



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

January 29, 2003

Chief Deputy Steve Ackerman
Constable Precinct 2
Dallas County
305 North 5th Street
Garland, Texas 74040

OR2003-0596

Dear Chief Deputy Ackerman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175840.

Dallas County Constable Precinct 2 (the "constable") received a request for six categories of information relating to a citation issued to the requestor. You indicate that the constable does not possess information responsive to items 2, 3, 5, and 6 of the request. The Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984). With respect to items 1 and 4 of the request, you state that the Dallas County District Attorney's Office advised the constable to seek a decision from this office regarding the public availability of the requested information.

We must address the constable's obligations under section 552.301 of the Government Code. Under section 552.301, a governmental body that receives a written request for information that it wishes to withhold from public disclosure pursuant to an exception under the Public Information Act must ask for a decision from this office about whether the information is within that exception. Gov't Code § 552.301(a). 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 tenth business day after the date of receiving the written request. Gov't Code § 552.301(b). Furthermore, the governmental body must submit to this office within fifteen business days of receiving the 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. Gov't Code § 552.301(e).

The request at issue is dated October 24, 2002. You submitted your request for a decision from this office on November 15, 2002. Thus, your request for a decision was not submitted within the ten business day deadline. In your request for a decision, you do not raise any exceptions to disclosure under the Public Information Act that you claim apply to the requested information. Moreover, you have not provided a copy of the specific information requested or comments explaining why the information should be withheld under the Public Information Act. We find that the constable has failed to comply with the procedural requirements of section 552.301 in submitting this request for a decision.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements mandated in section 552.301 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). This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law). In this case, because you have not submitted the information for our review or raised any exceptions to its disclosure, we have no basis to overcome the presumption that the information is public. *Id.* Thus, we have no choice but to order the requested information released per section 552.302 of the Government Code.

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# 175840

c: Mr. Donny S. Eisenbach
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