



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

July 21, 2003

Ms. Melissa L. Barloco
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2003-5014

Dear Ms. Barloco:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184560.

The Harris County Sheriff's Department (the "department") received a request for: 1) a variety of information pertaining to a specified incident; and 2) the job performance evaluations of, investigations of, employment histories of, law enforcement training histories of, and commendations and awards given to, two specified department deputies. You claim that portions of the requested information are excepted from disclosure pursuant to sections 552.101, 552.103, 552.117, 552.119, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that portions of the submitted information may constitute grand jury records that are not subject to the Public Information Act (the "Act"). Article 20.02(a) of the Code of Criminal Procedure provides that "[t]he proceedings of the grand jury shall be secret." This office has concluded that grand juries are not subject to the Act and that records that are within the constructive possession of grand juries are not public information subject to disclosure under the Act. *See* Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to the Act. *See id.* Information that is not so held or maintained is subject to the Act and may be

¹ We note that although the department did not claim that portions of the requested information were excepted from disclosure under sections 552.119 and 552.130 of the Government Code within ten business days of the department's receipt of the request, we will address the department's claims under these exceptions to disclosure since such claims constitute compelling interests that are sufficient to overcome any existing presumption that the portions of the requested information to which these claims pertain are now public. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision Nos. 150 at 2 (1977), 319 (1982).

withheld only if a specific exception to disclosure is applicable. *See id.* Thus, to the extent that any portion of the information that we have marked as subject to article 20.02 is in the custody of the department as agent of the grand jury, such information is in the constructive possession of the grand jury and is therefore not subject to disclosure under the Act. However, to the extent that any portion of this information is not in the custody of the department as agent of the grand jury, we will address your claims.

You claim that some of the submitted information constitutes medical record information that is subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. The MPA provides that "a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter." Occupations Code § 159.002(b). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982).* Medical records must be released upon the governmental body's receipt of the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See Occ. Code §§ 159.004, .005.* Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. *See Open Records Decision No. 565 at 7 (1990).* We have marked the portions of the submitted information which are subject to the MPA. The department may only disclose this information in accordance with the access provisions of the MPA. *See Occ. Code § 159.005(a)(5), (b); see also Open Records Decision Nos. 598 (1991), 546 (1990) (finding that because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records).* Absent the applicability of an MPA access provision, the department must withhold this information pursuant to the MPA.

We note that portions of the submitted information constitute dental record information that is subject to chapter 258 of the Occupations Code. Section 258.102 provides:

(a) The following information is privileged and may not be disclosed except as provided by this article:

(1) a communication between a dentist and a patient that relates to a professional service provided by the dentist; and

(2) a dental record.

(b) The privilege described by this section applies regardless of when the patient received the professional service from the dentist.

Occ. Code § 258.102. A "dental record" means dental information about a patient that is created or maintained by a dentist and relates to the history or treatment of the patient. *See* Occ. Code §258.101. We have marked the portions of the submitted information that constitute dental record information that was created or maintained by a dentist and which relates to the history or treatment of a patient. Absent the applicability of a dental record access provision, the department must withhold this information pursuant to chapter 258 of the Occupations Code.

Next, we note that portions of the remaining submitted information are subject to section 552.022 of the Government Code. Section 552.022 makes certain information public, unless it is expressly confidential under other law. *See* Gov't Code § 552.022(a). One category of public information under section 552.022 is "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]" *Id.* § 552.022(a)(1). We note that most of the internal affairs investigation case documents that you submitted to us for our review constitute completed investigations for purposes of section 552.022(a)(1). These case numbers are 00-0054-0403, 00-0145-0907, 01-0027-0219, and 02-0296-1210. Further, we note that the case that does not constitute a completed investigation, case number 03-0014-0111, contains completed reports for purposes of section 552.022(a)(1). Consequently, unless any portion of these completed investigations and reports is expressly confidential under other law or is excepted from disclosure pursuant to section 552.108 of the Government Code, it must be released to the requestor.² Although the department claims that all of the submitted internal affairs investigation case documents are excepted from disclosure pursuant to section 552.103 of the Government Code, we note that this exception to disclosure is a discretionary exception to disclosure under the Act and, as such, does not constitute "other law" that makes information confidential.³ Accordingly, we conclude that the department may not withhold any portion of the completed investigations and completed reports pursuant to section 552.103 of the Government Code. However, since the department also claims that portions of this particular information are excepted from disclosure pursuant to section 552.101 of the Government Code, we will address the department's claims with respect to that particular information. We will also address the department's claims with

² We note that the department does not claim that any portion of the submitted information is excepted from disclosure under section 552.108 of the Government Code.

³ Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 473 (1987) (governmental body may waive section 552.111), 522 at 4 (1989) (discretionary exceptions in general); *see also Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.-Dallas 1999, no pet.) (governmental body may waive section 552.103). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

respect to the submitted personnel files, as well as the department's section 552.103 claim with respect to the portions of case number 03-0014-0111 that are not subject to section 552.022(a)(1) of the Government Code.

You claim that portions of the submitted internal affairs investigations are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.⁴ Section 1703.306 provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

Occ. Code § 1703.306. We have marked the portions of these investigations which constitute information acquired from polygraph examinations. It does not appear that any of the exceptions in section 1703.306 apply in this instance. *See* Open Records Decision 565 (1990) (construing predecessor statute). Accordingly, we conclude that the department must withhold this marked information pursuant to section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

In addition, you claim that portions of the submitted personnel files contain W-4 forms that are excepted from disclosure pursuant to section 552.101 in conjunction with federal law. We note that a W-4 form is confidential under section 6103(a) of title 26 of the United States Code. Accordingly, we conclude that the department must withhold the W-4 forms that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

⁴ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

We note that the submitted personnel files and internal affairs investigations contain social security numbers of individuals who are not current or former department employees that may be exempted from disclosure pursuant to section 552.101 in conjunction with federal law. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). The department has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain social security numbers. Therefore, we have no basis for concluding that the social security numbers contained within the submitted personnel files and internal affairs investigations are confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers, the department should ensure that they were not obtained and are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

We also note that criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”), (2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Section 411.083 provides that any CHRI maintained by the Department of Public Safety (“DPS”) is confidential. *See* Gov’t Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *See id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). However, the definition of CHRI does not include driving history record information maintained by the DPS under subchapter C of chapter 521 of the Transportation Code. *See* Gov’t Code § 411.082(2)(B). Furthermore, where an individual’s criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual’s right to privacy.⁵ *See United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Accordingly, to the extent that the requested information includes CHRI that is confidential under federal law, chapter 411 of the Government Code, or the common-law right to privacy in accordance with the decision in *Reporter’s Committee*, we conclude

⁵ Section 552.101 also encompasses information that is protected from disclosure by the common-law right to privacy. *See* Gov’t Code § 552.101.

that the department must withhold such information pursuant to section 552.101 of the Government Code.

Further, you claim that other portions of the requested personnel files are excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy. Information must be withheld from disclosure under the common-law right to privacy when it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683.

This office has long held that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from disclosure pursuant to the common-law right to privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 at 5 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Prior decisions of this office have also found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, a public employee's allocation of his salary to a voluntary investment program or to optional insurance coverage that is offered by his employer is a personal investment decision and information about it is excepted from disclosure under the common-law right of privacy. *See* Open Records Decision Nos. 600 (1992) (finding designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care related to personal financial decisions), 545 (1990) (finding information relating to deferred compensation plan, an individual's mortgage payments, assets, bills, and credit history excepted from disclosure under common-law privacy), 523 (1989). However, information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not excepted from disclosure. *See* Open Records Decision No. 600 at 10 (1992). We have marked the portions of the submitted personnel files and internal affairs investigations that are protected from disclosure by the common-law right to privacy. Accordingly, we conclude that the department must withhold this information pursuant to section 552.101 of the Government Code.

You also claim that portions of the submitted personnel files are excepted from disclosure pursuant to section 552.117 of the Government Code. Section 552.117(a)(2) excepts from disclosure "information that relates to the home address, home telephone number, or social

security number” of a peace officer, or that reveals whether the peace officer has family members. *See* Gov’t Code § 552.117(a)(2). We have marked the information in the submitted personnel files and internal affairs investigations that the department must withhold pursuant to section 552.117(a)(2) of the Government Code.

In addition, you claim that portions of the submitted personnel files are excepted from disclosure pursuant to section 552.119 of the Government Code. Section 552.119 excepts from disclosure a photograph of a peace officer that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies.⁶ The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. Section 552.119 also provides that a photograph that is excepted from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. *See* Open Records Decision No. 502 (1988). The submitted information includes photographs depicting peace officers and it does not appear that any of the exceptions described above are applicable in this instance. You indicate that the peace officers who are depicted in these photographs have not executed any written consent regarding the disclosure of these photographs. Accordingly, we conclude that the department must withhold the photographic information that we have marked within the submitted personnel files and internal affairs investigations pursuant to section 552.119 of the Government Code.

Further, you claim that portions of the submitted personnel files are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov’t Code § 552.130; *but see* Gov’t Code § 552.023 (providing that individual or individual’s authorized representative has limited special right of access to information when only basis for excepting information from disclosure involves protection of same individual’s privacy interest); *see also* Open Records Decision No. 481 (1987). Accordingly, we conclude that the department must withhold the Texas motor vehicle information that we have marked within the submitted personnel files and internal affairs investigations pursuant to section 552.130 of the Government Code.

We also note that portions of the submitted personnel files and internal affairs investigations are excepted from disclosure pursuant to section 552.136 of the Government Code. Section 552.136 makes certain access device numbers confidential and provides:

- (a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile

⁶“Peace officer” is defined by article 2.12 of the Code of Criminal Procedure.

identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value;
or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. Accordingly, we conclude that the department must withhold the account numbers that we have marked within the submitted personnel files and internal affairs investigations pursuant to section 552.136 of the Government Code.

In addition, we note that portions of the submitted personnel files contain e-mail addresses that are subject to section 552.137 of the Government Code. Section 552.137 provides in relevant part:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. Section 552.137 requires the department to withhold e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the department, unless the members of the public with whom they are associated have affirmatively consented to their release. Section 552.137 does not apply to a government employee's work e-mail address or a business's general e-mail address or website address. Accordingly, we conclude that the department must withhold the e-mail addresses that we have marked within the submitted personnel files pursuant to section 552.137 of the Government Code, unless the members of the public with whom they are associated have affirmatively consented to their release.

The department must release to the requestor the remaining portions of: 1) the submitted personnel files; 2) the four completed internal affairs investigations; and 3) the completed

reports in case number 03-0014-0111 that are subject to section 552.022(a)(1) of the Government Code.

We now address your section 552.103 claim with respect to the remaining non-section 552.022 portions of internal affairs case number 03-0014-0111. Section 552.103 provides in pertinent part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code, § 552.103(a),(c). The department maintains the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date that the governmental body receives the request for information and (2) the information at issue is related to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *see also Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The department must meet both prongs of this test for information to be excepted under section 552.103(a).

A governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture" when establishing that litigation is reasonably anticipated. *See* Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.⁷ *See* Open Records

⁷ In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

Decision Nos. 555 (1990), 518 at 5 (1989) (litigation must be “realistically contemplated”). A governmental body may also establish that litigation is reasonably anticipated by showing that it has received a claim letter from an allegedly injured party or his or her attorney and by stating that the letter complies with the notice of claim provisions of the Texas Tort Claims Act (the “TTCA”) or an applicable municipal ordinance. *See* Open Records Decision No. 638 (1996). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986).

You state, and provide documentation showing, that the department received a letter from the requestor that meets the requirements to serve as notice to Harris County under the TTCA and which pertains to the incident that prompted this request. Therefore, we agree that the department reasonably anticipated litigation with respect to the incident that prompted this request prior to the time that the department received the request for information. Furthermore, we find that the remaining submitted information associated with internal affairs case number 03-0014-0111 is related to this anticipated litigation for purposes of section 552.103. Accordingly, we conclude that the department may withhold the remaining submitted information that is associated with internal affairs case number 03-0014-0111 and that is not subject to section 552.022(a)(1) pursuant to section 552.103 of the Government Code.

However, we note that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all potential opposing parties in the anticipated litigation is not excepted from disclosure under section 552.103(a) and may not be withheld from disclosure on that basis. Further, we note that the applicability of section 552.103(a) ends once the litigation has been concluded or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).⁸

In summary, to the extent that any portion of the information that we have marked as subject to article 20.02 is in the custody of the department as agent of the grand jury, such information is in the constructive possession of the grand jury and is therefore not subject to disclosure under the Act. Absent the applicability of a relevant access provision, the department must withhold the medical and dental record information that we have marked pursuant to the MPA and chapter 258 of the Occupations Code, respectively. The department must withhold the information that we have marked within the submitted personnel files and internal affairs investigations pursuant to section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code and

⁸ Because we base our ruling on the above noted exceptions to disclosure and claims, we need not address the applicability of your remaining claims.

section 6103(a) of title 26 of the United States Code. Portions of that information also contain social security numbers of individuals who are not current or former department employees that may be confidential under federal law. To the extent that the requested information includes CHRI that is confidential under federal law, chapter 411 of the Government Code, or the common-law right to privacy in accordance with the decision in *Reporter's Committee*, the department must withhold such information pursuant to section 552.101. The department must withhold the information that we have marked within the submitted personnel files and internal affairs investigations pursuant to section 552.101 in conjunction with the common-law right to privacy. The department must also withhold the information that we have marked pursuant to sections 552.117(a)(2), 552.119, 552.130, and 552.136 of the Government Code. In addition, the department must withhold the e-mail addresses that we have marked within the submitted personnel files pursuant to section 552.137 of the Government Code, unless the members of the public with whom they are associated have affirmatively consented to their release. The department must release the remaining portions of: 1) the submitted personnel files; 2) the four completed internal affairs investigations; and 3) the completed reports in case number 03-0014-0111 that are subject to section 552.022(a)(1) of the Government Code. The department may withhold the remaining submitted information that is associated with internal affairs case number 03-0014-0111 and that is not subject to section 552.022(a)(1) pursuant to section 552.103 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

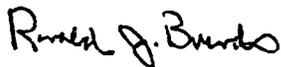
of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Dep't of Pub. 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# 184560

Enc. Marked documents and submitted audiotapes

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