



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 19, 2003

Mr. Mark E. Price
Criminal District Attorney
San Jacinto County
#1 State Highway 150, Room 21
Coldspring, Texas 77331

OR2003-9217

Dear Mr. Price:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 193090.

The Criminal District Attorney of San Jacinto County (the "district attorney") received a request for copies of time sheets of a named individual "with the actual times worked and the project case or cause number of cases in which [the individual] has been investigating from December 1, 2001 until present." You state that some responsive information will be provided to the requestor, but claim that case names contained in the submitted records are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address your obligations under section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) 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 10th business day after the date of receiving the written request.

You state that the district attorney received the request for information on August 11, 2003. You did not request a decision from this office until October 8, 2003. *See* Gov't Code § 552.308(a) (ten-day requirement met if request bears post office cancellation mark indicating time within ten-day period). Consequently, the district attorney failed to comply with section 552.301 of the Government Code in requesting a decision from our office with respect to the requested information.

Because the district attorney failed to comply with the procedural requirements of section 552.301 in requesting this decision from us, 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 district attorney must demonstrate a compelling interest in order to overcome the presumption that the information at issue is now public. *See* Gov't Code § 552.302; *see also* *Hancock*, 673 S.W.2d at 323, Open Records Decision No. 630 (1994). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or when third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although the district attorney claims that the information at issue is excepted from disclosure pursuant to section 552.108 of the Government Code, we note that the district attorney has not demonstrated a compelling interest under this exception to disclosure in this instance that would allow any portion of the information at issue to be withheld from the requestor. *But see* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information under predecessor to section 552.108 may provide compelling reason for nondisclosure in certain circumstances). Accordingly, we conclude that the district attorney may not withhold any portion of the information at issue under section 552.108 of the Government Code. As you raise no other exception for this information, it 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 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 193090
Enc. Submitted documents

c: Mr. Gregory B. Cagle
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(w/o enclosures)