ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 28, 2004

Lt. Carol Taylor
Records Manager
Taylor County Sheriff's Department
450 Pecan Street
Abilene, Texas 79602-1692

OR2004-4413

Dear Lt. Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202410.

The Taylor County Sheriff's Department (the "department") received a request for "[t]he letter, memo, or document, which referred to [the requestor] and [another specified individual], that was posted in the break room and signed by employees of the [department]." You claim that the requested information is not subject to the Public Information Act (the "Act"). In the alternative, you claim that the requested information is excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered your arguments have reviewed the submitted information. We have also considered comments submitted to us by the requestor. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

You claim that the submitted information does not constitute "public information" that is subject to the Act. *See* Gov't Code § 552.002. You state that this information "is not information collected, assembled or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business." We note that section 552.021 of the Government Code provides for public access to "public information." *See* Gov't Code § 552.021. Section 552.002(a) 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.

Gov't Code § 552.002(a). Thus, under this provision, information is generally "public information" within the scope of the Act when it relates to the official business of a governmental body or is maintained by a public official or employee in the performance of official duties, even though it may be in the possession of one person. *See* Open Records Decision No. 635 at 4 (1995). In addition, section 552.001 states it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See* Gov't Code § 552.001(a).

Based on your representations and our review of the submitted information, we agree that the information was not collected, assembled, or maintained by the department under a law or ordinance or in connection with the transaction of official department business. Accordingly, we conclude that the submitted information is not subject to the Act and need not be released to the requestor.[1] *See* Gov't Code § 552.002(a), *see also* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving de minimis use of state resources).

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.

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[1] Because we base our ruling on section 552.002 of the Government Code, we need not address your claimed exception to disclosure.

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,

David R. Saldivar
Assistant Attorney General
Open Records Division

RJB/DRS/krl

Ref: ID# 202410

Enc. Submitted document

c: Mr. Alfredo Solis
641 EN 22nd Street
Abilene, Texas 79601
(w/o enclosures)