



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 6, 2004

Ms. Jill Torbert  
Assistant District Attorney  
Bexar County  
300 Dolorosa, 5<sup>th</sup> Floor  
San Antonio, Texas 78205-3030

OR2004-5472

Dear Ms. Torbert:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204663.

The Bexar County Infrastructure Department (the "county") received a request for any and all records of all county employees who receive free or subsidized parking. The requestor subsequently clarified that his request is to include employee position and title, department, date free parking permit was issued or how long such permit has been held, and salary, as well as records relating to the parking policy. You claim that some of the requested information is not "public information" under the Public Information Act (the "Act"). In the alternative, you claim that this information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note that you have not submitted information responsive to the portion of the request seeking records related to the parking policy, nor have you raised any exception to the disclosure of this information. We therefore presume that you have already provided the requestor with this particular information to the extent that it existed on the date of the county's receipt of the request for information. If not, then the county must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We now turn to your arguments for the submitted information. Section 552.002(a) of the Government Code 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, information is generally “public information” under 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. You assert that “[w]here an employee parks does not pertain to an office or position of duty, trust, or authority.” However, you also explain that the parking garage in question has “437 spaces . . . reserved for County employees” and that the surface lot in question has 38 spots “reserved for County elected officials and the managerial staff of the County offices and departments[.]” Further, the county operates and maintains the parking facilities. Therefore, we find that the submitted information, which concerns parking spaces reserved for county employees, is maintained by the county in connection with its official business. Accordingly, we conclude that the submitted information is subject to disclosure under the Act and must be released to the requestor, unless an exception to disclosure applies. *See* Gov’t Code § 552.002(a).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Under this section, this office has determined that information may be withheld from public disclosure upon a showing of certain special circumstances. In Open Records Decision No. 169 (1977), we considered the personal safety concerns of public employees and recognized that there may be specific instances where “special circumstances” exist to except from public disclosure some of the employees’ addresses. *See* Open Records Decision No. 123 (1976). In that decision, the employees demonstrated that their lives would be placed in danger if their addresses were released to the public. ORD 169 at 7. This office further noted that the initial determination of credible threats and safety concerns should be made by the governmental body to which a request for disclosure is directed, and this office will determine whether a governmental body has demonstrated the existence of special circumstances on a case-by-case basis. *Id.* We noted, however, that “special circumstances” do not include “a generalized and speculative fear of harassment or retribution.” *Id.* at 6.

First, you state that although the requestor is not requesting the names of individuals, “in most instances, identifying the title or position [of an individual in this instance] will be synonymous with stating the person’s name.” You assert that “[b]y releasing information that confirms that an elected official or the judge of a particular court parks his vehicle in the county facilities, we would provide to the public critical information about where someone

parks his car and leaving people venerable [sic] to physical attack.” You have submitted affidavits from Deputy Chief Dennis James McKnight of the Bexar County Sheriff’s Office, Court Security and Transport Division, and Chief Investigator Michael C. Beers of the Bexar County District Attorney’s Office. Deputy Chief McKnight attests that certain individuals have made specific threats against judges, other elected officials, and county employees who park in the garage and surface lot in question. Additionally, he asserts that the “release of the requested parking records would pose a serious risk by enabling an individual to plan an attack on a County official or employee based upon this information.” Deputy Chief McKnight further opines that “release of this information, if used to determine the parking habits of County officials and employees, will present an imminent threat of physical danger or bodily harm to the individuals whose records were requested.” Finally, Chief Investigator Beers adds that specific death threats have been made against the Bexar County District Attorney and her staff, and that “being aware of the parking location of employees will provide the individual with information that could jeopardize the employees’ safety.” Based on your representations, the representations of Deputy Chief McKnight and Chief Investigator Beers, and our review of the submitted information, we conclude that the county has demonstrated the existence of special circumstances regarding judges, county officials, county employees, and the Bexar County District Attorney and her staff. Accordingly, the county must withhold the responsive information related to judges, county officials, county employees, and the Bexar County District Attorney and her staff under section 552.101 of the Government Code.<sup>2</sup>

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;

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<sup>2</sup>As our ruling is dispositive, we need not address your argument under section 552.102 of the Government Code.

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,



Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/krl

Ref: ID# 204663

Enc. Submitted documents

c: Mr. Jeff Coyle  
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(w/o enclosures)