



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2005

Mr. Bill Price
Assistant District Attorney
Navarro County
300 West 3rd Avenue, Suite 203
Corsicana, Texas 75110

OR2005-01729

Dear Mr. Price:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 218590.

The Navarro County Sheriff's Department (the "sheriff") received a request for information pertaining to the entry of a specified residence by officers on September 2, 2004. We understand you to represent that the requested information has been released to the requestor, with the exception of certain information in item 2 of the request. Item 2 of the request asks for a list of officers present at the incident, to include names, addresses, telephone numbers, TCLEOSE identification numbers, and employing agency. You claim that this information, other than the officers' names, is excepted from disclosure under section 552.117 of the Government Code.

First, you indicate that the sheriff intends to withhold the addresses and telephone numbers of the peace officers at issue pursuant to the previous determination of this office in Open Records Decision No. 670 (2001). In that decision, we determined that a governmental body may withhold the home address, home telephone number, personal cellular phone number, personal pager number, social security number, and information that reveals whether the individual has family members, of any individual who meets the definition of "peace officer" set forth in article 2.12 of the Texas Code of Criminal Procedure or "security officer" in section 51.212 of the Texas Education Code, without the necessity of requesting an attorney general decision as to the applicability of the section 552.117(a)(2) exception. *See* Open Records Decision No. 670 (2001); *see also* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a)). We therefore agree the sheriff may withhold the requested home addresses and telephone numbers from disclosure pursuant to the previous determination in Open Records Decision No. 670.

Next, we must address the sheriff's obligations under section 552.301 with respect to the request for TCLEOSE identification numbers and employing agency information. Under

section 552.301(e), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure under the Public Information Act (the "Act") is required to 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. In this case, as you have not submitted a copy or sample of the requested TCLEOSE identification numbers or employing agency information, we find the sheriff has failed to comply with the procedural requirements of section 552.301(e) with respect to this portion of the request.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *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 section 552.302); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). While section 552.117 can provide a compelling reason to overcome the presumption of openness, as the sheriff has not submitted the TCLEOSE or employing agency information in this case, we have no basis to determine that section 552.117 is applicable to such information. We therefore conclude that, to the extent the sheriff maintains the requested TCLEOSE identification numbers and employing agency information of the officers at issue, the sheriff must release this information to the requestor. If you believe this information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 218590

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