



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

June 10, 2005

Ms. Rachel Boates  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2005-05112

Dear Ms. Boates:

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# 225818.

The Harris County Facilities and Property Management Department (the "county") received a request for "the names and dates of birth of all contract workers employed with Weiser Security ("Weiser") who perform security duties (such as metal detector screeners) at Harris County Court Buildings or any other facility where Harris County offices are located." You state that the county does not maintain information responsive to the request. You inform us that Weiser maintains the requested information but contend that it is not a governmental body subject to the Act and therefore is not required to comply with this open records request. We have considered your arguments and reviewed the information you submitted.

The Act applies to "public information," defined as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business . . . 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)(2). Therefore, information that is maintained by a private entity is subject to the Act to the extent a governmental body owns or has a right of access to the information at issue.

You have submitted a copy of the contract between Weiser and the county. We note that the terms of the submitted contract expressly state that Weiser must "maintain the following

records on each contractor's employee assigned to Harris County, and provide for review by Harris County upon request . . . personnel records." We therefore conclude that the county has a right of access to the requested information. Thus, the requested information is subject to the Act.

We next note that you have not submitted any information responsive to the present request. Pursuant to section 552.301(e) of the Government Code, a governmental body must submit the following information to this office within fifteen business days of its receipt of 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. *See* Gov't Code § 552.301(a), (e). In this instance, you have not submitted any information responsive to this request. Thus, the county failed to comply with the procedural requirements of section 552.301. The county's failure to submit the responsive information or a representative sample of the responsive information results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ). In order to overcome this presumption, the county must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. You have not provided a compelling reason to overcome the presumption of openness. Thus, we have no choice but to order the information released per section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge the 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 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, 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 10 calendar days of the date of this ruling.

Sincerely,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/jev

Ref: ID# 225818

Enc. Submitted documents

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(w/o enclosures)