



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 26, 2005

Mr. David M. Swope  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002-1700

OR2005-06674

Dear Mr. Swope:

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# 228828.

The Harris County Sheriff's Department (the "sheriff") received a request for seven categories of information regarding a named sheriff's deputy. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the requestor, in his request for information, allows the department to withhold an "officer's current and former home addresses, home telephone numbers, social security number, and information indicating whether the peace officer has family members, vehicle identification numbers, and driver's license or motor vehicle or title or registration that Texas has issued, medical information or information indicating disabilities or specific illnesses, from severe emotional and job-related stress, prescription drugs, illnesses, operations, and physical handicaps, tax forms, and personal financial information pertaining to voluntary financial decisions and financial transactions that do not involve public funds." Thus, this information is not responsive to the present request. We do not address your arguments for the non responsive information, which we have marked, and it need not be released.

Section 552.108 of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You do not explain, nor is it apparent from the face of the submitted documents, how the deputy’s personnel file relates to any pending criminal case, nor have you otherwise shown how release of the personnel file would interfere with the detection, investigation or prosecution of crime. Therefore, the sheriff may not withhold the deputy’s personnel file under section 552.108(a)(1). *See also* Open Records Decision Nos. 562 at 10 (1990) (stating that law enforcement exception does not protect general personnel information about a peace officer or information concerning complaints filed against the officer), 361 at 3 (1983) (information relating to complaints against peace officers and disciplinary actions resulting therefrom not excepted under statutory predecessor).

We note, however, that some of the information at issue is also subject to section 1703.306 of the Occupations Code. Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses section 1703.306, which provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member’s agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner’s activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

Occ. Code § 1703.306(a). The sheriff must withhold the polygraph information we have marked under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

In summary, the sheriff need not release the information we have marked as non responsive. The sheriff must withhold the polygraph information we have marked under section 552.101 in conjunction with section 1703.306 of the Occupations Code. The remaining information must be released.

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); *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,

A handwritten signature in black ink, appearing to read 'José Vela III', with a long horizontal flourish extending to the right.

José Vela III  
Assistant Attorney General  
Open Records Division

JV/krl

Ref: ID# 228828

Enc. Submitted documents

c: Neal Davis  
DeGuerin, Dickson & Hennessy  
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Houston, Texas 77002  
(w/o enclosures)