ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2006

Ms. Susan A. Bowen
Assistant Criminal District
Attorney- Civil Section
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

OR2006-01339

Dear Ms. Bowen:

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# 242103.

The Bexar County Sheriff (the "sheriff") received a request for several categories of information regarding the jail commissary operation. You state that most of the requested information will be released to the requestor. You claim, however, that the remaining requested information is excepted from disclosure under section 552.136 of the Government Code. We have considered the exception you claim and reviewed the submitted information.[1]

Section 552.136 of the Government Code provides:

> (a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

[1]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). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. Upon review, we agree that you must withhold the bank routing and account numbers we have marked under section 552.136 of the Government Code.

We note that the submitted information contains social security numbers that the sheriff may be required to withhold under section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Section 552.117(a)(2) excepts from disclosure this same information regarding a peace officer regardless of whether the officer elected under section 552.024 or 552.1175 of the Government Code to keep such information confidential.[2] Pursuant to section 552.117(a)(2), the sheriff must withhold the social security numbers of those listed licensed peace officers who are currently or formerly employed by the sheriff. Pursuant to section 552.117(a)(1), the sheriff must also withhold the social security numbers of its listed current or former employees who made a timely election to keep such information confidential.

We also note, however, that even if the social security numbers are not protected by section 552.117, they must be withheld under section 552.147 of the Government Code.[3] Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the sheriff must withhold the social security numbers contained in the submitted information under section 552.147 of the Government Code if neither section 552.117(a)(1) nor section 552.117(a)(2) applies.[4]

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[2]The term peace officer is defined in article 2.12 of the Texas Code of Criminal Procedure.

[3]Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon).

[4]We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

In summary, the sheriff must withhold the bank routing and account numbers we have marked under section 552.136 of the Government Code. The sheriff must withhold the social security numbers of those listed licensed peace officers who are currently or formerly employed by the sheriff under section 552.117(a)(2) and the sheriff must also withhold the social security numbers of its listed current or former employees who made a timely election to keep such information confidential under section 552.117(a)(1). Even if section 552.117 is not applicable, the social security numbers must be withheld under section 552.147 of the Government 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).

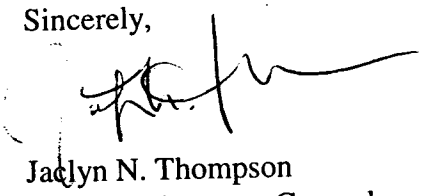
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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. 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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 242103

Enc. Submitted documents

c: Kim Arocha
4137 Modena
San Antonio, TX 78218
(w/o enclosures)