



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2006

Mr. Brendan Guy
Assistant County Attorney
Henderson County
100 East Tyler Street, Room 100
Athens, Texas 75751

OR2006-03178

Dear Mr. Guy:

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# 245528.

The Henderson County Sheriff's Office (the "sheriff") received a request for all information pertaining to a specified incident. We understand you to claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

Initially, we note that the sheriff has not complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body does not request an attorney general decision as prescribed by section 552.301, the requested

information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.*

You state that the sheriff received the present request for information on January 9, 2006. However, you did not request a ruling until January 25, 2005. Thus, you did not request a decision and state the exception you claim within the ten-business-day period prescribed by section 552.301(b). Furthermore, you have failed to submit the information that you seek to withhold, or a representative sample of the information, as prescribed by section 552.301(e)(1)(D). Therefore, the requested information is presumed to be public and must be released, unless there is a compelling reason to withhold any of the information. *See Gov't Code § 552.302; See 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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although section 552.101 of the Government Code can provide a compelling reason for nondisclosure of information under section 552.302, we have no basis for concluding that the requested information is excepted under this section because you failed to submit any portion of it to us for our review. Therefore, we have no choice but to order you to release the information at issue. If you believe that the information at issue is confidential, private, or proprietary 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 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,



Brian J. Rogers
Assistant Attorney General
Open Records Division

BJR/krl

Ref: ID# 245528

Enc. Submitted documents

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