ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2006

Mr. Ted G. Walker
Criminal District Attorney
Jasper County
121 North Austin, Room 101
Jasper, Texas 75951

OR2006-06108

Dear Mr. Walker:

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# 251310.

The Jasper County Auditor (the "county") received two requests from the same requestor for payroll and benefit information of named individuals, a list of county officials who possess wireless lap top computers, and a list of temporary employees who were paid for food distribution over a specified period. You indicate that the county has released information responsive to the request for information pertaining to lap top computers, but ask this office to advise you what other information should be disclosed.

Pursuant to section 552.301 of the Government Code, a governmental body has certain procedural obligations when it receives a written request for information that it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Under section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records 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. Gov't Code § 552.301(e)(1)(A)-(D). You state that the county received the first request for information on March 28, 2006. The requestor submitted a second request on April 3, 2006. Thus, the ten-business-day deadline for stating

the applicable exceptions for information responsive to the first request was April 11, 2006, while the ten-business-day deadline for stating applicable exceptions for information responsive to the second request was April 17, 2006. Further, the fifteen-business-day deadline to comply with section 552.301(e) for the initial request was April 18, 2006, while the fifteen-business-day deadline to comply with section 552.301(e) for the second request was April 24, 2006. However, as of the date of this letter you have not stated any applicable exceptions; submitted a copy or representative sample of the requested information; nor submitted written comments stating the reasons why any exceptions would allow the information to be withheld. Accordingly, we conclude that you have failed to comply with section 552.301 with respect to this information.

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. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). However, because you have not submitted the requested information, we have no basis for concluding that there is any compelling reason to withhold the requested information under any such exception. 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

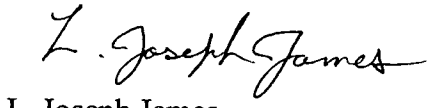
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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); *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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/ir

Ref: ID# 251310

Enc. Submitted documents

c: Ms. Wincy Walker
1206 Woodland Park
Jasper, Texas 75951
(w/o enclosures)