



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 17, 2006

Ms. Mary J. Ibarra
Assistant Criminal District Attorney
Bexar County
300 Dolorosa, Suite 4049
San Antonio, Texas 78205-3030

OR2006-07630

Dear Ms. Ibarra:

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# 254391.

The Bexar County Sheriff's Office (the "sheriff") received two requests from the same requestor for 1) the disciplinary records of seven employees¹ and 2) compilations of the sheriff's "Professional Standards and Integrity Case Files" from 1997 to 2003 and compilations of Federal Bureau of Investigations investigations of alleged acts of excessive force. You inform us that the sheriff has no objection to release of the information responsive to the second request, and will make the information available upon payment of the applicable costs, with redactions of any social security numbers pursuant to section 552.147 of the Government Code.² You claim that the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹ As the sheriff submitted a redacted copy of the request, we take our description from your brief.

² 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.

Initially, we must address the sheriff's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code § 552.301(a), (b)*. Within fifteen business days after receiving the request, a governmental body must submit the written request for information, the information requested, and written comments explaining why the stated exceptions apply. *See Gov't Code § 552.301(c)*. You inform us that the sheriff received the present request on March 15, 2006. However, you did not request a ruling from this office until May 10, 2006, and did not submit the majority of the responsive information until May 12, 2006. *See Gov't Code § 552.308* (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Further, the request for information you submitted to this office was redacted. Consequently, we find that the sheriff failed to comply with the procedural requirements of section 552.301.

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 unless a compelling reason exists for withholding the information from disclosure. *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). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under law. Open Records Decision No. 150 (1977). Although you assert that the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.108 of the Government Code, these exceptions are discretionary exceptions that may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). *But see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). In failing to comply with section 552.301, the sheriff waived its claimed exceptions under sections 552.103, 552.107, and 552.108. Therefore, none of the submitted information may be withheld under those sections.

We must also note that this office was unable to review the audio recording you submitted. We contacted the sheriff and asked that the audio recording be submitted in a compatible software format or other medium reviewable by this office. As of this date, we have not received another copy of the audio recording. Section 552.301(e)(1)(D) requires a governmental body to submit a copy of the requested information. Section 552.302 of the Government Code provides that failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released, absent a compelling reason to withhold the information. *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). Because we cannot review the audio recording, we have no basis for finding it confidential. Thus, we have no choice but to order it 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.

We also note that information in the submitted documents regarding a prisoner's mental health would generally be protected under common law privacy in conjunction with section 552.101 of the Government Code.³ Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In this instance, however, there is a legitimate public interest in the information at issue. Thus, this information may not be withheld under common law privacy.

We also note that some of the submitted information may be subject to section 552.117 of the Government Code. Section 552.117(a)(1) excepts from public disclosure the present 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. Section 552.117(a)(2) protects the same information regarding a peace officer regardless of whether the officer made an election under section 552.024 or section 552.1175 of the Government Code.⁴ Pursuant to section 552.117(a)(2), the sheriff must withhold the above-listed information if the employees at issue were licensed peace officers at the time this request was received. If the employees at issue were not licensed peace officers, the sheriff must withhold the same information under section 552.117(a)(1) if those employees elected, prior to the receipt of this request, to keep such information confidential. We have marked the information in the submitted documents that may be subject to section 552.117.

We also note that the submitted documents contain Texas driver's license numbers. Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this

³ Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses common law privacy.

⁴"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

state. Thus, the sheriff must withhold the Texas driver's license numbers marked in the submitted documents.

The submitted information also contains bank account numbers. Section 552.136 of the Government Code states that "[n]otwithstanding 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. The sheriff must withhold the bank account numbers we have marked pursuant to section 552.136.

Lastly, we note that the submitted information contain social security numbers. Section 552.147 of the Government Code 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.

In summary, we have marked the information that may be subject to section 552.117. The Texas driver's license numbers we have marked must be withheld under section 552.130. The sheriff must withhold the bank account numbers we have marked pursuant to section 552.136. The sheriff must withhold the social security numbers we have marked under section 552.147. 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,



José Vela III
Assistant Attorney General
Open Records Division

JV/eb

Ref: ID# 254391

Enc. Submitted documents

c: Ms. Gloria Halberg
434 Deer Cross Lane
San Antonio, Texas 78258
(w/o enclosures)