



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 21, 2006

Mr. C. R. (Kit) Bramblett
County Attorney
Hudspeth County
P. O. Box 221528
El Paso, Texas 79913-1528

OR2006-07903

Dear Mr. Bramblett:

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# 254698

The Hudspeth County Sheriff's Department (the "sheriff") received a request for "the identity of and all booking information on [incarcerated] individuals[.]" You state that the sheriff does not have information responsive to the portion of the request for "the court in which [the case] is filed[.]"¹ You claim that the remaining requested information is excepted from disclosure, but raise no exceptions under the Act.² We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that the requestor asks that the sheriff supply him with the requested information "daily . . . beginning Monday, May 8, 2006." The Act does not require a

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We 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.

governmental body to comply with a continuing request to supply information on a periodic basis as such information is prepared in the future. Instead, the Act applies only to information that a governmental body possesses or has access to at the time it is requested.³ Moreover, the Act does not require a governmental body to inform a requestor if the governmental body gains access to responsive information, or if responsive information comes into its possession after a request is made. Open Records Decision No. 452 at 3 (1986). Consequently, we conclude that the sheriff is not required to comply with this request to the extent it asks the sheriff to provide information that the sheriff did not possess or have access to when the request was made. *See* Attorney General Opinion JM-48 at 2 (1983); Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987).

Next, we must address the sheriff's obligations under the Act. Section 552.301(b) of the Government Code provides that a governmental body that wishes to withhold requested information must "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request." Gov't Code § 552.301(b). Pursuant to 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. *Id.* § 552.301(e)(1)(A)-(D). You indicate that the sheriff received the request for information on May 8, 2006. Thus, the ten-business-day and fifteen-business-day deadlines to comply with section 552.301 were May 19, 2006 and May 26, 2006, respectively. However, as of the date of this letter you have not stated the exceptions that apply, nor submitted a copy or representative sample of the requested information. 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 information is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. Gov't Code § 552.302; *see also 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); Open Records Decision No. 319 (1982). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party

³It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351.

interests are at stake. Open Records Decision No. 150 at 2 (1977). In this instance you have waived any discretionary exceptions you sought to raise. See Open Records Decision No. 522 (1989) (discretionary exceptions in general). Accordingly, the requested information may not be withheld on any of these bases. Furthermore, by failing to submit any information for our review, we have no basis for finding it confidential under any of the mandatory exceptions. Thus, we have no choice but to order you to release the responsive information in accordance with section 552.302 of the Government Code. 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).

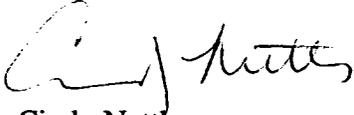
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/krl

Ref: ID# 254698

c: Mr. Pascual Q. Olibas
Freedom Bail Bonds
P. O. Box 220234
El Paso, Texas 78813