



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 6, 2007

Mr. Jim Wiginton
Assistant District Attorney
Brazoria County
111 East Locust, Suite 408A
Angleton, Texas 77515-4676

OR2007-01533

Dear Mr. Wiginton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 269683.

The Brazoria County Sheriff's Office (the "sheriff") received a request for the following categories of information on all registered sex offenders: name, date of birth, home address, occupation, name of employer, city/town of employer, and campus code or name. You state that the sheriff has released the names, dates of birth and home addresses of the county's registered sex offenders. You claim, however, that the registrants' employment information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted sample information.¹

Initially, we must address the sheriff's responsibilities 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(b). You state that the sheriff received the request for information on October 11, 2006. Thus, you were required to request a decision from this office by October 25, 2006. You did not request a decision, however, until November 7,

¹We assume that the 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.

2006. Furthermore, you did not submit a copy of the responsive records until November 17, 2006, well after the statutory deadline. *See id.* § 552.301(e)(1)(D) (requiring governmental entity to submit certain items to attorney general within fifteen business days of receiving written request).

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 the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because your claims under section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider your arguments.

Section 552.101 of the Government Code exempts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Article 62.051 of the Code of Criminal Procedure requires a sex offender registrant to provide the following information for the Texas Department of Public Safety (the “department”) sex offender registration database: the person's full name; each alias; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size; home address; a photograph of the person; a complete set of the person's fingerprints; the type of offense the person was convicted of; the age of the victim; the date of the conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at particular public or private institution of higher education in this state or another state, and the name and address of that institution; and any other information required by department. *See* Crim. Proc. Code art. 62.051(b), (c). With few exceptions, this information is generally public and must be released by a local law enforcement authority upon request. *See id.* art. 62.005(b), (d).

In addition to the enumerated categories of information prescribed in article 62.051(c), a registrant must provide any other information required by the department. *See id.* art 62.051(c)(7). You assert that because the requested employment information is outside the enumerated categories of information, it is “other information required by the department” as referenced in article 62.051(c)(7). You, therefore, contend that pursuant to article 62.005(b)(2), the employment information of registrants is not subject to public disclosure.

We disagree because we conclude that the registrants' employment information is subject to article 62.051(c)(6). Among the types of information that are considered public is an indication as to whether the registrant is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution. *See id.* art. 62.051(c)(6). Thus, article 62.051(c)(6) requires the release of an indication of any employment of sex offender registrants. Accordingly, we conclude that the marked information is public information under article 62.005(b) and 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).

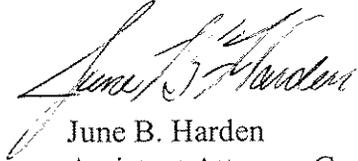
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/sdk

Ref: ID# 269683

Enc: Submitted documents

c: Mr. Steve Bivens
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(w/o enclosures)