



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 15, 2008

Mr. Roy L. Cordes, Jr.
Fort Bend County Attorney
301 Jackson Street, Suite 728
Richmond, Texas 77469-3108

OR2008-06669

Dear Mr. Cordes:

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# 310130.

The Fort Bend County Sheriff's Office (the "sheriff"), which you represent, received a request for all incoming and outgoing e-mails from sixteen named sheriff employees over a specified ten-day time period.¹ You argue that most of the submitted e-mails are not subject to the Act. You claim that some of the submitted e-mails are excepted from disclosure under sections 552.117, 552.130, and 552.136 of the Government Code.² We have considered your arguments and reviewed the submitted information. We have also received and considered comments from an attorney representing the sheriff's Chief Deputy and the sheriff. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We first note that some e-mails within Exhibit C-2 were created after the present request for information was received. Thus, these e-mails, which we have marked, are not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the sheriff is not required to release that information in response to the request.

¹The requestor subsequently narrowed her request to exclude any e-mails regarding CPS matters and ongoing police investigations. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²Although you raise section 552.101 of the Government Code in conjunction with section 552.117, this office has concluded that section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

Next, we address the sheriff's obligations under section 552.301 of the Government Code. This section prescribes procedures that must be followed in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 552.301(a). Section 552.301(e) provides in part that a governmental body must submit to this office, not later than the fifteenth business day after the date of its receipt of the request, the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(D). If a governmental body fails to comply with 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 any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex.App.—Austin 1990, no writ).

In this instance, we note that you have submitted responsive e-mails within Exhibit C-2 that have been redacted in such a way that this office is unable to review them. You have provided a representation from the Sheriff's Chief deputy in which the Chief Deputy states that he refuses to provide unredacted copies of these e-mails to this office for review because of pending civil litigation with the requestor. We rule that, in failing to submit these e-mails in unredacted form, the sheriff did not comply with section 552.301(e). Thus, these e-mails are presumed to be public under section 552.302. This statutory presumption can generally be overcome when the information is confidential by law or third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. In this case, a third party appears to assert that Exhibit C-2 contains privileged attorney-client communications. However, as we are unable to discern the nature of these redacted e-mails, we can make no such determination. Thus, we conclude that the sheriff must release the two redacted e-mails within Exhibit C-2, which we have marked, to the requestor in their entirety.³ If the sheriff believes that this information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

We next address your assertion that the e-mails within Exhibits C-3 and C-4 are not subject to the Act. The Act is only applicable to "public information." *See Gov't Code § 552.021*. Section 552.002(a) defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988)*.

You argue that the numerous e-mails within Exhibits C-3 and C-4 "have not been maintained in connection with the transaction of official business and do not contain references to official business." Based on your representations and our review, we agree that Exhibit C-3

³As our ruling on Exhibit C-2 is dispositive, we need not address your remaining argument against disclosure.

and most of the e-mails within Exhibit C-4 do not constitute information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by or for the sheriff. Accordingly, we rule that these e-mails are not subject to the Act. *See* Gov't Code §§ 552.002, .021; *see also* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). However, you do not explain how the remaining e-mails within Exhibit C-4 do not constitute communications made in connection with official sheriff business. *See* Gov't Code § 552.002(a)(1). Thus, we have marked the e-mails that are not subject to the Act and need not be released in response to this request.⁴ We will now address your arguments against disclosure of the remaining information at issue.

Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The sheriff must withhold the Texas license plate numbers we have marked within Exhibit C-5 under section 552.130 of the Government Code.

We next address your assertion that the "GroupWise" password you have marked is excepted from disclosure under section 552.136 of the Government Code. Section 552.136 provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. You state that the password you have marked "may be utilized to access a GroupWise account created by Fort Bend County." You do not explain how the

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

marked password may be used to obtain money, goods, services, or another thing of value for purposes of section 552.136. Accordingly, this password may be not withheld under this exception.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).⁵ See Gov't Code § 552.137(a)-(c). The e-mail addresses contained in the remaining information, which we have marked, are not the type specifically excluded by section 552.137(c). Therefore, unless the individuals whose e-mail addresses are at issue consented to release of their e-mail addresses, the sheriff must withhold the e-mail addresses we have marked in accordance with section 552.137.

In summary, the sheriff must withhold the information we marked under sections 552.130 and 552.137 of the Government Code. The remaining responsive information that is subject to the Act must be released to the requestor in its entirety.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

⁵The Office of the Attorney General will raise a mandatory exception like on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 challenge 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,


Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 310130

Enc. Submitted documents

c: Ms. LeaAnne Klentzman
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(w/o enclosures)