



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 29, 2009

Mr. Ron R. Shuffield  
Director, Human Resources  
Taylor County Courthouse  
300 Oak Street  
Abilene, Texas 79602

OR2009-18342

Dear Mr. Shuffield:

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# 365702.

The Taylor County Jail (the "county") received a request for a list of jailers terminated since January 1, 2009, as well as any employment and complaint records pertaining to those jailers. You inform this office the requested list of terminated jailers does not exist.<sup>1</sup> You claim the submitted information is excepted under sections 552.101, 552.102, 552.103, 552.115, 552.117, 552.1175, 552.130, and 552.140 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the county's procedural obligations under the Act. Pursuant to section 552.301(e), the governmental body must submit to this office written comments stating the reasons why the stated exceptions apply that would allow the information at issue to be withheld. Gov't Code § 552.301(e)(1)(A). You state the submitted records are excepted from public disclosure under sections 552.101, 552.102, 552.103, 552.115, 552.117, 552.1175, 552.130, and 552.140 of the Government Code. However, you have

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received, or obtain information that is not held by or on behalf of the governmental body. 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 No. 452 at 3 (1986).

failed to submit any arguments explaining the applicability of the claimed exceptions. Consequently, we find the county failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the 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; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Section 552.103 of the Government Code is discretionary in nature; it serves only to protect a governmental body's interests and 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); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). As such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. In failing to comply with section 552.301, the county has waived its claim under section 552.103; therefore, the county may not withhold the submitted information under section 552.103. You also claim sections 552.101 in conjunction with the doctrine of common-law privacy and several state statutes, 552.115, 552.117, 552.1175, 552.130, and 552.140 of the Government Code. The applicability of these mandatory exceptions can provide compelling reasons for non-disclosure. However, the only documents you submitted for our review are "termination documents" pertaining to the jailers, consisting of Employment Separation Notices, letters notifying the county human resources office of the terminations, and one F-5 form. The submitted documents do not contain information subject to these mandatory exceptions. The requestor seeks all employment and complaint records pertaining to the jailers at issue. Because these additional documents were not submitted for our review, we have no basis to find these mandatory exceptions are applicable to the remaining employment and complaint records responsive to this request. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must submit specific information requested or representative samples thereof). Accordingly, we have no choice but to order you to release any unsubmitted employment and complaint records pertaining to jailers terminated since January 1, 2009. If you believe this information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code. As previously stated, however, you did submit "termination documents" pertaining to the specified jailers. You claim these records are excepted from disclosure under section 552.102. Because section 552.102 is a mandatory exception, we will address the applicability of that section to the submitted documents.

Section 552.102(a) of the Government Code excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" Gov't Code § 552.102(a). Section 552.102 is applicable to information

that relates to public officials and employees. See Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102(a) is the same as the common-law privacy test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). 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. *Id.* at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has stated in numerous opinions that the public has a legitimate interest in knowing the reasons for the dismissal of public employees and the circumstances surrounding their termination. Open Records Decision No. 444 at 6 (1986); see Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). The submitted information relates directly to the county's termination of the jailers at issue. Accordingly, we determine none of the submitted information may be withheld under section 552.102(a).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is made confidential by other statutes, such as section 1701.454 of the Occupations Code, which governs the release of reports or statements submitted to the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE"). Section 1701.454 provides as follows:

(a) A report or statement submitted to the [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this section, a [TCLEOSE] member or other person may not release the contents of a report or statement submitted under this subchapter. The report or statement may be released only by the [TCLEOSE] employee having the responsibility to maintain the report or statement and only if:

(1) the head of a law enforcement agency or the agency head's designee makes a written request on the agency's letterhead for the report or statement accompanied by the agency head's or designee's signature; and

(2) the person who is the subject of the report or statement authorizes the release by providing a sworn statement on a form supplied by the [TCLEOSE] that includes the person's waiver of liability regarding an agency head who is responsible for or who takes action based on the report or statement.

Occ. Code § 1701.454. As noted above, the submitted information includes an F-5 Report of Separation of License Holder form. This form reflects the jailer to whom the report pertains was terminated for an administrative violation. We therefore conclude this individual was not terminated due to violations of the law other than traffic offenses, and the county must withhold the submitted F-5 form pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

In summary, the county must withhold the marked F-5 form under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The remaining requested information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

Ref: ID# 365702

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)