



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 19, 2011

Mr. Ben Stool  
Assistant District Attorney  
Civil Division  
Dallas County Criminal District Attorney's Office  
4100 Elm Street Suite 500  
Dallas, Texas 75202-3384

OR2011-13519

Dear Mr. Stool:

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# 430308.

The Dallas County Constable, Precinct 1 (the "county") received a request for any information pertaining to the termination of the requestor's client, the investigation file for the requestor's client, and the requestor's client's personnel file. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup> We also have considered the comments we received from the requestor. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Initially, we note the requested information includes the deputy's personnel file. Although you state you have submitted a representative sample of the requested information, the

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records at issue. This ruling neither reaches nor authorizes the county to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 (1988), 497 (1988).

submitted representative sample consists exclusively of records of the county's investigation and termination of the deputy. Thus, we find the submitted information is not representative of the information responsive to the part of the request seeking the deputy's personnel file. We therefore assume the county has released any other personnel records relating to the former deputy that existed when the county received the request for information. If not, then the county must release any information immediately.<sup>2</sup> *See id.* §§ 552.221, .301, .302; Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we must determine whether the county complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether information is excepted from public disclosure under the Act. *See* Gov't Code § 552.301(a). Section 552.301(e)(1)(A) requires the governmental body to submit to this office "written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld[.]" *Id.* § 552.301(e)(1)(A). Section 552.301(e-1) provides as follows:

A governmental body that submits written comments to the attorney general under Subsection (e)(1)(A) shall send a copy of those comments to the person who requested the information from the governmental body not later than the 15<sup>th</sup> business day after the date of receiving the written request. If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the person must be a redacted copy.

*Id.* § 552.301(e-1). You have provided our office with a copy of the written comments the county provided to the requestor pursuant to section 552.301(e-1). The requestor states, and we agree, that except for part of one sentence, the county has redacted its entire argument under section 552.108 of the Government Code from the requestor's copy of the county's comments. We note the redacted portion of the county's comments neither discloses nor contains the substance of the information requested. We therefore conclude the county failed to comply with section 552.301(e-1) of the Government Code in requesting a decision under section 552.108.

Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary

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<sup>2</sup>We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

exceptions), 586 at 1-2 (1991) (statutory predecessor to Gov't Code § 552.108 may be waived), 177 at 3 (1977) (same). In failing to comply with section 552.301(e-1) with regard to its claim under section 552.108, the county has waived this exception because it is not a compelling reason to withhold the information. *See* Gov't Code § 552.302. Therefore, the county may not withhold any of the submitted information under section 552.108 of the Government Code.

We next note the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is expressly confidential under "other law" or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). In this instance, the submitted information consists of a completed investigation made for or by the county. Although the county also seeks to withhold the submitted information under section 552.103 of the Government Code, that section is a discretionary exception a governmental body may waive. *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 Gov't Code § 552.103); ORDs 665 at 2, 662 at 5. As such, section 552.103 is not "other law" that makes information expressly confidential for purposes of section 552.022(a)(1). Therefore, the county may not withhold any of the submitted information under section 552.103 of the Government Code.

We note some of the submitted information appears to be protected by copyright. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See* Open Records Decision No. 180 at 3 (1977); *see also* Open Records Decision No. 109 (1975). A custodian of public records also must comply with copyright law, however, and is not required to furnish copies of records that are copyrighted. *See* ORD 180 at 3. A member of the public who wishes to make copies of copyrighted materials must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. Therefore, the county must release the submitted information, but any copyrighted information may only be released in compliance with copyright law.

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,

A handwritten signature in black ink, appearing to read 'Bob Davis', with a stylized, cursive script.

Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/agn

Ref: ID# 430308

Enc. Submitted documents

c: Requestor  
(w/o enclosures)