



March 15, 2000

Ms. Caryn L. Carson
Sheinfeld, Maley & Kay
1700 Pacific Avenue, Suite 4400
Dallas, Texas 75201

OR2000-1043

Dear Ms. Carson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133001.

You state that you submit this request for a decision on behalf of Kaufman County and County Judge Wayne Gent (collectively "the county"). You state that Judge Gent received the request for 22 categories of information on December 29, 1999 and that the county has provided some of the requested information to the requestor in response to the request. You also contend the county need not comply with that part of the request that requires it to perform research or create records. However, you claim that portions of the remaining requested information are excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

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 . . . a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not comply with section 552.301(e) because you did not submit copies of the specific information requested or representative samples of the information requested within fifteen business days of receiving the request.

¹Initially, we note that this office received correspondence from the requestor informing us that he had mailed a similar request to Kaufman County Sheriff Robert Harris. This decision does not address the obligation of the Kaufman County Sheriff to produce the information requested.

Under section 552.302, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Gov't Code §552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make a compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). We do not believe that you have demonstrated a compelling reason under section 552.103 to overcome the presumption of openness. Therefore, you may not withhold the responsive information from the requestor under section 552.103. We caution, however, that distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352.

We turn to your contention that some of the information requested can only be furnished if the county performs research, compiles statistics and creates records.² You argue that the county is not required to create records under the Public Information Act (the "act"). Section 552.002 of the Government Code defines "public information" as information "collected, assembled, or maintained" by a governmental body. Section 552.002(c) provides that public information may exist as a book, paper, letter, document, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map and drawing and a voice, data, or video representation held in computer memory. The act applies only to information in existence, and does not require a governmental body to prepare new information. Therefore, as the act establishes that a request applies only to information in existence when the request is received by the governmental body, the county is not required to perform research, or produce information which was not in existence at the time the request for information was received. Nor is the county required to create new documents, such as a list, in response to a request. Open Records Decision Nos. 563 (1990), 561 (1990), 555 (1990), 534 (1989). Although the act does not require a governmental body to answer factual questions, conduct legal research, or create new information in response to a request, a governmental body must make a good faith effort to relate a request to information which it holds. *Id.* In other words, if the county is able to identify documents in the county's possession from which the requestor could ascertain the answers that he is seeking, the county must provide the requestor with those documents.

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.

²The information referred to here is that which is enumerated in item numbers 1, 4, 5, 10, 11, 12, 18, 20, 21 and 22 of the request.

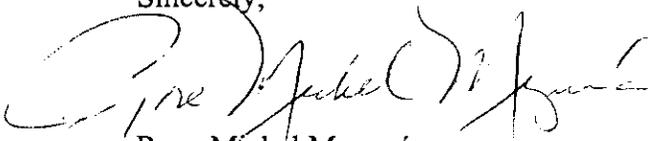
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Rose-Michel Munguía
Assistant Attorney General
Open Records Division

RMM/ch

Ref: ID# 133001

Encl. Submitted documents

cc: Mr. Wayne Perry
P.O. Box 125
Terrell, Texas 75160
(w/o enclosures)