



April 24, 2000

Mr. Thomas Keever
Assistant District Attorney
Office of Criminal District Attorney
P.O. Box 2850
Denton, Texas 76202

OR2000-1582

Dear Mr. Keever:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134454.

The Office of the Honorable Kirk Wilson of the Denton County Commissioners Court (the "office") received a request for information relating to twenty-one enumerated items for the date of January 24, 2000. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.²

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, the governmental body, "no later than the 15th business day after the date of receiving the written request," must submit to the attorney general "written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld," "a copy of the written request for information," and "a copy of the specific information requested."

¹We note that you maintain that the request is "overbroad and does not sufficiently specify the documents and/or information it seeks." However, you state that you recognize that this office's previous ruling, Open Records No. 2000-0254 (2000), as well as other rulings regarding previous identical requests received by your office, are controlling on this issue.

²The submitted information consists of one piece of electronic correspondence and an attorney's status report.

Gov't Code § 552.301(e)(1)(A), (B), (D). If the governmental body fails to submit any of these materials, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302.

You state that the office received the request for information on February 2, 2000. Accordingly, the county's deadline for submitting to this office the information at issue, your written explanations for withholding the information, and the actual request for information expired fifteen business days later on February 24, 2000.³ See Gov't Code § 552.301(e)(1)(D). However, according to the date on the postmark, you did not mail these materials to this office until February 25, 2000. Therefore, the office has missed its fifteen-day deadline as prescribed by section 552.301. Consequently, absent a compelling reason to withhold the requested information, the information must be released.

This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law. See Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). You argue that the submitted information is excepted under sections 552.103 and 552.107 of the Government Code. However, those two sections are discretionary exceptions under the Public Information Act and not confidentiality provisions. See Open Records Decision No. 473 at 2 (1987) (discretionary exceptions under the Public Information Act can be waived). Therefore, your arguments concerning sections 552.103 and 552.107 do not provide a compelling reason to withhold the submitted information. You also claim that the submitted information is confidential by law under section 552.101. However, you have neither provided any support for your assertion, nor have you identified a law which would make any of the submitted information confidential. After reviewing the submitted documents, we do not believe that they contain any confidential information. Therefore, we find that there is no compelling reason for the office to withhold any of the information. Accordingly, the office must release the submitted information to the requestor.

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

³This date takes into account the fact that February 21, 2000 was a national holiday.

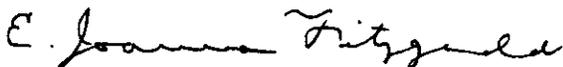
filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not 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,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 134454

Encl: Submitted documents

cc: Mr. Charles Siderius
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P.O. Box 369
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(w/o enclosures)