



August 3, 2000

Mr. Elton R. Mathis  
Assistant Criminal District Attorney  
Waller County, Texas  
836 Austin Street, Suite 105  
Hempstead, Texas 77445

OR2000-2943

Dear Mr. Mathis:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137705.

The Waller County Sheriff's Office ( the "sheriff's office") received a request for twenty items of information relating to three specific individuals and any information regarding events that occurred on a specific date. You state that you have released items 4 - 9 to the requestor. You state that the information responsive to items 1, 10, and 19 are now available to the requestor. You state that items 2, 11 - 18, and 20 do not exist. You state that your inquiry to this office only pertains to item 3 of the request, dispatch transmission tapes made from 3:30 p.m. to 8:30 p.m. on May 17, 2000. You claim that item 3 is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Before considering whether the sheriff's office's claimed exceptions except item 3 from public disclosure, we will address your assertion that no documents exist pertaining to items 2, 11 - 18, and 20 of the request. The Public Information Act (the "Act") does not require a governmental body to prepare new information in response to open records requests. Open Records Decisions Nos. 452 (1986), 342 (1982). Furthermore, the Act does not ordinarily require a governmental body to obtain new information to comply with a request. Open Records Decision No. 561 (1990). The Act only applies to information already in existence. In this instance, it appears the sheriff's office does not have the requested information.

Therefore, the sheriff's office need not create any new documents to respond these portions of the open records request.

Next, we address your determination to withhold some of the information responsive to items 10 and 19 without submitting that information to this office first for our ruling. Pursuant to section 552.301, a governmental body is required to ask this office for a decision if it wishes to withhold information and submit to this office a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code §552.301(a), (e). If a governmental body fails to comply with section 552.301, the information is presumed public. Gov't Code §552.302.

In the instant case, you did not ask the office for a decision or submit the information responsive to items 10 and 19 that you wish to withhold. Therefore, you have failed to meet the requirements of section 552.301. Because you have not submitted the information, we have no basis for finding it confidential. Thus, we have no choice but to order the information responsive to items 10 and 19, that you have withheld, released in its entirety per section 552.302. If you believe the information is confidential and may not be lawfully be released, you must challenge the ruling in court as delineated below.

Finally, you assert that the information responsive to item 3 is excepted from public disclosure under sections 552.101, 552.103, and 552.108. The sheriff's office, however, did not submit the information responsive to item 3 to this office. As stated above, pursuant to section 552.301(e)(4), the governmental body must submit to this office a copy or a representative sample of the requested information. You state that in this instance the production of item 3 would interfere with the functions of the sheriff's office because there exists only one machine on which the tapes may be copied or played. Although we sympathize with the hardship that the sheriff's office may have due to its limited resources, the mandate of section 552.301 of the Government Code is clear. The fact that it may be burdensome to provide the information does not relieve a governmental body of its responsibility to comply with the Act. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (1976), *cert. denied*, 430 U.S. 931 (1977) (cost or difficulty in complying with Act does not determine availability of information); Open Records Decision No. 497 (1988). If your office holds information from which the requested information can be obtained, your office must provide that information to the requestor unless it is otherwise excepted from disclosure. Because you did not submit the information in any form to this office, we have no basis for finding it confidential or excepted from public disclosure under the exceptions you have claimed. Thus, we have no choice but to order the information released per section 552.301. As stated above, if you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

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 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,



Noelle C. Letteri  
Assistant Attorney General  
Open Records Division

NCL/pr

Ref: ID# 137705

Encl. Submitted documents

cc: Mr. William E. Parham  
Attorney at Law  
916 Wilkins Street  
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(w/o enclosures)