



December 15, 2000

Ms. Sarajane Milligan  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002-1700

OR2000-4714

Dear Ms. Milligan:

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# 142290.

The Harris County Sheriff's Department (the "department") received a request for information containing seven enumerated categories of information. You have submitted for our review as responsive to items 1, 2, and 3 of the request documents marked by you as exhibits D, E, and F. You indicate that the department has previously furnished to the requestor the information responsive to item 4 of the request, and that the requestor has been notified of this pursuant to section 552.232 of the Act. *See Gov't Code § 552.232.* You assert that the requested information in items 1, 2, 3, 5, 6, and 7 of the request is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111 and 552.117 of the Government Code. The requestor has also submitted comments to this office. *See Gov't Code § 552.304.* We have considered the exceptions you claim, the submitted comments, and we have reviewed the submitted information.

With regard to exhibits D, E, and F, which we understand to be responsive to items 1, 2, and 3 of the request, you have argued the applicability of sections 552.103 and 552.117. You also indicate that this office has previously rendered a decision as to the precise information at issue in Open Records Letter Ruling No. 2000-1819 (2000), that the department has challenged that decision in court, and that the matter is pending. Because there is a pending lawsuit filed against this office over the release of the documents that are responsive to items 1, 2, and 3 of the request, this decision shall not address that information. This office instead will allow the trial court to resolve the issue of whether these records must be released to the requestor.

In addition, because you represent that the information responsive to item 4 of the request has been released to the requestor, this decision shall only address the information responsive to items 5, 6, and 7 of the request.

We note that the department has not submitted for our review any information responsive to items 5, 6, and 7 of the request.<sup>1</sup> You state with respect to each item that the department “is not aware” of information responsive to items 5, 6, and 7, but that “if such [responsive information] exists, it would not be maintained in a separate file, but in the employee’s individual personnel file.” You further state that the department would be required to “search approximately 5,600 individual personnel files” to determine whether they contain responsive information. We note that the department has a good faith duty to relate a request to information held by it. Open Records Decision No. 561 at 8 (1990). Moreover, it has long been established that the difficulty of complying with a public information request is not a relevant factor in determining whether the responsive information is excepted from required public disclosure. *See, e.g., Industrial Found. v. Texas Industrial Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *see also* Attorney General Opinion JM-672 (1987) (the difficulty or cost of complying with a public information request does not determine whether the information is available to the public). Your comments do not affirmatively represent to this office that the department holds no information responsive to items 5, 6, and 7 of the request. If responsive information does not exist, the department need not further respond to the request. However, if after an exhaustive search the department identifies information responsive to items 5, 6, and 7 of the request, we next address whether such responsive information would be excepted from disclosure.

Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general’s decision and state the exceptions that apply no later than the 10<sup>th</sup> business day after the date of receiving the written request. The requestor contends the department failed to meet this deadline. You represent to this office that the department received the request on September 27, 2000. Your initial correspondence to this office asserting exceptions to the requested information is dated and was received by this office on October 11, 2000, the tenth business day after September 27, 2000. However, the requestor has submitted to this office a copy of a return receipt for certified mail, signed and dated by a “C. Meinhart” and indicating a date of delivery of September 26, 2000, which the requestor states demonstrates that the request was received by the department on September 26, 2000, not September 27, 2000. In the open records ruling process, this office is unable to resolve disputes of fact. If the request was received by the department on September 26, 2000, we conclude that the department has failed to comply with the deadline under section 552.301(b) of the Act.

Pursuant to section 552.301(e)(1), a governmental body is also required to submit to this office not later than the fifteenth business day after receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the

---

<sup>1</sup>Item 5 requests copies of correspondence from January 1, 1990 to the present from any current or former department employee alleging “the whistle blowers act.” Item 6 requests copies of complaint letters from January 1, 1990 to the present by citizens or department employees which complain of “racism, racist attitudes, or racist conduct.” Item 7 requests copies of complaint letters from January 1, 1990 to the present by department employees which allege “sexual harassment, inappropriate conduct, or misconduct” against a female department employee or female citizen.

specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office copies or representative samples of the specific information that was requested in items 5, 6, and 7 of the request. Additionally, after initially asserting sections 552.101, 552.108, and 552.111, you have submitted no comments in support of these exceptions. Because the department has not explained the applicability of sections 552.101, 552.108, or 552.111 to any of the information at issue, we consider these assertions to have been waived.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to request a decision of this office as provided by section 552.301 results in the legal presumption that the information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." *See* Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). This office has long held that a compelling reason to withhold information exists, sufficient to overcome the section 552.302 presumption of openness, where the information at issue is made confidential by another source of law or affects third party interests. *See, e.g.*, Open Records Decision Nos. 26 (1974), 150 (1977). Sections 552.101 and 552.117 may thus demonstrate a compelling reason sufficient to overcome the section 552.302 presumption of openness. However, because you have provided no responsive information for our review, we have no basis for concluding that any of the information is excepted under section 552.101 or 552.117. You specifically argue the applicability of section 552.103. We note, however, that section 552.103, as well as sections 552.108 and 552.111, are discretionary exceptions that, even if otherwise applicable, do not demonstrate a compelling reason sufficient to overcome the section 552.302 presumption of openness.<sup>2</sup> Because the department has failed to demonstrate a compelling reason for withholding any of the information at issue, we conclude pursuant to section 552.302 that the department must release to the requestor the information responsive to items 5, 6, and 7 of the request.

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

---

<sup>2</sup>Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)); 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding); 549 at 6 (1990) (governmental body may waive informer's privilege); 522 at 4 (1989) (discretionary exceptions in general); *see also Birnbaum v. Alliance of American Insurers*, 994 S.W.2d 766, 776 (Tex. App. -- Austin, 1999, pet. filed) (governmental body may waive section 552.112).

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).

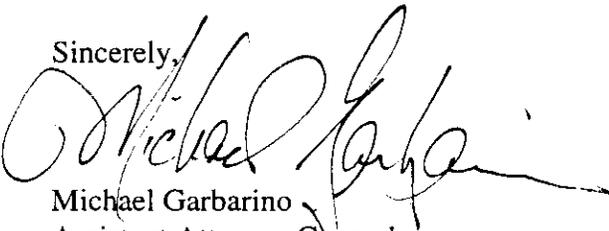
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/seg

Ref: ID# 142290

Encl. Submitted documents

cc: Mr. John Beard  
20711 Teal Point Drive  
Katy Texas 77450  
(w/o enclosures)