



May 9, 2001

Ms. Laura Garza Jimenez
Nueces County
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2001-1881

Dear Ms. Jimenez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146979.

Nueces County (the “county”) received a request for “copies of all tape recordings and/or other documents ... relating to the civil service hearings conducted on or about January 9, 2001, and January 24, 2001 relating to the termination/reinstatement” of two named employees. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We begin by noting that the requested information contains the minutes and tape recordings of open meetings of the county’s civil service commission. Under section 551.022 of the Government Code, “[t]he minutes and tape recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body’s chief administrative officer or the officer’s designee.” Therefore, you must release the submitted minutes and tape recordings to the requestor.

Next, we note that it appears the requestor mailed the county the same request twice. The first request was mailed to the county’s human resources department. In a letter dated February 7, 2001, the county’s human resources department replied to the request by indicating that the requestor should address the request to the county’s public information officer. The requestor subsequently mailed the identical request to the county’s public information officer on February 12, 2001. However, in general, a written request for information need not be addressed to a governmental body’s public information officer in order for the requirements of the Public Information Act (the “Act”) to be triggered. Open Records Decision Nos. 497 at 3 (1988), 44 at 2 (1974); *but see* Gov’t Code § 552.301(c)

(A request made by electronic mail or facsimile transmission must be addressed to the officer for public information or the officer's designee.). A written communication that can be judged to be a request for public information is a request for information sufficient to initiate the requirements of the Act. ORD Nos. 497 at 3, 44 at 2. Therefore, the requestor's original request, which was received by the county's human resources department by February 7, 2001, was sufficient to trigger the Act. *See* ORD Nos. 497 at 3, 44 at 2.

Under section 552.301(b), a governmental body has ten business days from the date it receives a request for information to request a ruling from the Office of the Attorney General concerning whether the information fits within an exception to required disclosure. Assuming the human resources department received the original request for information no later than February 7, 2001, the date it sent its reply to the requestor, the county had until February 22, 2001, to request a decision from this office. However, the county did not send its request for a ruling to this office until March 5, 2001. Therefore, the county failed to meet its deadline under section 552.301(b). Because the request for a decision was not timely sent, the requested information is presumed to be public information. Gov't Code § 552.302. In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). Section 552.103 is a discretionary exception and, therefore, cannot provide a compelling reason for overcoming the presumption that the requested information is open to the public. *See* Open Records Decision No. 551 (1990). Nevertheless, sections 552.101 and 552.117 of the Government Code can provide compelling reasons for overcoming the presumption.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). Therefore, the county must withhold the certified agendas of closed meetings included in the submitted information under section 552.101 in conjunction with section 551.104(c) of the Government Code. We have marked the confidential agendas. In addition, section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. Thus, you must withhold the federal tax return information contained within the submitted information, which we have marked, under section 552.101.

Section 552.117(2) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former peace officers, regardless of whether the peace officer requested to keep this information confidential under section 552.024 of the Government Code. The requested information includes the home addresses, home telephone numbers, and social security numbers of two peace officers. You must withhold this information under section 552.117(2) of the Government Code.

In summary, the county must withhold the certified agendas of closed meetings, which we have marked, under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code. Likewise, the county must withhold the marked tax return information under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code. The county must also withhold the home addresses, home telephone numbers, and social security numbers of peace officers contained in the submitted information. However, you must release the remainder of the information.

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).

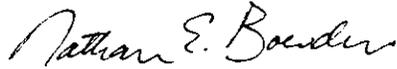
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 146979

Encl: Submitted documents

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