



May 24, 2001

Mr. Randal Lee
District Attorney
Cass County
P.O. Box 839
Linden, Texas 75563

OR2001-2148

Dear Mr. Lee:

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# 145388.

The Cass County Sheriff's Department (the "department") received a request for bank records from a named account that reflect transactions of payments to vendors and expenses incurred by the county jail from January 1, 1996 to October, 1998. You indicate the information in the possession of the department that is responsive to this portion of the request was released. The request also seeks "all records and invoices . . . that would detail expenses incurred in keeping prisoners at the Cass County Jail." You indicate the information in the possession of the department that is responsive to this portion of the request has also been released to the requestor. We understand, however, that other responsive information exists in the personal bank records of the former sheriff. Among other questions, you ask whether these personal bank records, from the period that the sheriff was in office and to the extent they reflect expenditures for feeding prisoners, constitute information that is subject to disclosure under the Act.¹ In addition to your comments and arguments, we have received comment from the requestor, which includes correspondence to the requestor from the former sheriff's attorney. The attorney for the former sheriff has also submitted comments to this office. *See Gov't Code § 552.304.* We have reviewed and considered all of the submitted comments and arguments.

¹You ask a number of questions of this office, including questions pertaining to sanctions that may be imposed against the former sheriff for failing to comply with the Act and how the department can obtain access to the information at issue. We note that this decision only addresses the question of whether the information at issue meets the definition of "public information" such that it is subject to the Act's disclosure requirements.

By way of background, we are informed that from 1985 until 1998, the former sheriff received from the county a per diem payment for feeding prisoners in the county jail. The former sheriff's attorney states:

[The County Commissioners] paid the sheriff a flat rate per prisoner per day. The sheriff submitted a report or claim to the Auditor setting out the prisoners he had confined and the number of days they were confined. This translated into "prisoner days." The set rate was applied to the prisoner days and the sheriff was reimbursed based on that. The actual cost [to feed the prisoners] did not factor in [as to the amount the sheriff was paid by the county]. The prisoners could have steak or pinto beans and cornbread. It made no difference as to the amount the sheriff was paid. If the sheriff could feed [the prisoners] for less than the [per diem] reimbursement rate, he made a personal profit. If [feeding the prisoners] cost more, he had a personal loss. No invoices or other evidence of cost or expense were submitted [to the Auditor]. Neither the county nor the sheriff in his official capacity made any payments to vendors. Such expenses were, under that system, the sheriff's personal expenses.

In his correspondence to this office, the attorney for the former sheriff also states:

[T]he per diem payments previously made to the sheriff were public funds until the payment was made by the county and received by the sheriff. At that time they clearly became the personal property of the sheriff. The sheriff cannot be made to account for those funds under the [Act]. If such funds are placed in the sheriff's personal bank account, the sheriff cannot be required under the [Act] to produce his personal bank records for inspection.

We thus understand the attorney for the former sheriff to argue that the information in the former sheriff's personal bank records that reflects expenditures for feeding the prisoners is not information subject to the Act.

Information that is subject to the Act, *i.e.* "public information," includes "information that is collected, assembled, or maintained . . . in connection with the transaction of official business . . . by a governmental body." Gov't Code § 552.002(a). There is no question that the department is a governmental body subject to the Act. Gov't Code § 552.003(1)(A)(i). The attorney for the former sheriff argues that the former sheriff, during the time that he was in office and in making expenditures for the feeding of prisoners in his custody, was acting solely in his personal capacity as a private individual. On this basis, it is asserted that the expenditures were "the sheriff's personal expenses." For these reasons, it is argued that information reflecting the expenditures is not subject to the Act. We disagree.

It is evidently among the duties of the office of the sheriff to feed prisoners in the county jail. Hence, we believe the sheriff, in performing this duty, acts in his official capacity, not in his

personal capacity or as a private individual. Expenditures pertaining thereto are accordingly made in connection with the department's transaction of its official business. We need not decide whether the expenditures, as the attorney for the former sheriff asserts, were expenditures of public monies or instead were "personal expenses" of the sheriff. In either case, the expenditures were clearly made in connection with the department's transaction of its official business. Records that clearly relate to official business are public records subject to the Act regardless of whether an individual member of a governmental body, the governmental body's administrative offices, or the custodian of records holds the records. Open Records Decision Nos. 635 at 3 (1995); 425 at 2 (1985).

In addition, the fact that the information at issue apparently is held only by the former sheriff does not render the information outside the reach of the Act. As we have stated:

If a governmental body could withhold records relating to official business simply because they are held by an individual member of the governmental body, it could easily and with impunity circumvent the [A]ct merely by placing all records relating to official business in the custody of an individual member. The legislature could not have intended to permit governmental bodies to escape the requirements of the [A]ct so easily.

Id. We acknowledge that the information at issue evidently exists only in personal bank records — a privately-owned medium. But this fact does not necessarily render information outside the reach of the Act. We have stated that information maintained on a privately-owned medium that is actually used in connection with the transaction of official business constitutes information subject to the Act. ORD 635 at 7. Thus, we conclude in this instance that to the extent the former sheriff's personal bank records contain information reflecting the expenditures he made while in office for the purpose of feeding prisoners in the county jail, such information constitutes "public information" subject to the disclosure requirements of the Act.

You express concern regarding the county's right of access to the information at issue. We note, however, that in this instance the question of the county's right of access is not pertinent to the issue of whether the information meets the definition of "public information." In situations where a private individual or entity acts as an agent of a governmental body, we have stated that a relevant factor in determining whether particular information is subject to the Act is the extent to which the governmental body has a right of access to the information. *See, e.g.*, Open Records Decision Nos. 585 (1991), 499 (1988), 462 (1987), 437 (1986). However, as noted above, in this instance the sheriff was acting in his official capacity in making the expenditures and not as a private individual in an agency-type relationship with the department. Thus, the question of the county's right of access to the information at issue is not a relevant factor that we need address in concluding that the information at issue here constitutes "public information" under the Act.

You assert no exceptions under the Act for withholding the information at issue, nor did the department comply with the requirements of section 552.301 of the Government Code with regard to the request. *See* Gov't Code § 552.301. Consequently, 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." Gov't Code § 552.302. A compelling reason sufficient to overcome the section 552.302 presumption of openness normally exists only where the information is made confidential by law or its release implicates the privacy interests of a third party. *See, e.g.,* Open Records Decision Nos. 150 (1977), 71 (1975), 26 (1974). Here, we have no indication that there exists a compelling reason to withhold the responsive information at issue.² Accordingly, we conclude the information at issue that is responsive to the request must be released to the requestor.³ As the department's officer for public information, the current sheriff has the duty of making the information at issue available to the requestor. *See* Gov't Code §§ 552.201(b), .203(1).

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

²You have not submitted the information, so we have no basis for concluding that the information or any portion thereof is confidential. *See* Gov't Code § 552.352. If you believe the information is confidential and cannot lawfully be released, you must challenge this decision in court as outlined below.

³You ask whether information pertaining to personal expenditures of the former sheriff, *e.g.* utility bills or car payments, is information subject to disclosure. We have no basis for concluding that such information would meet the definition of "public information" discussed herein. Nevertheless, assuming that such information is either subject to the Act, or is contained in documents or other media that also contain information subject to required disclosure under the Act, the particular information that pertains solely to such personal expenditures is not responsive to the request and therefore need not be disclosed.

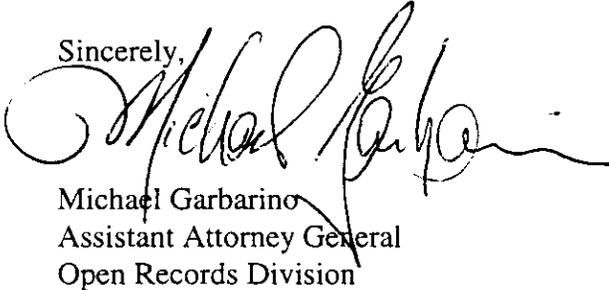
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to 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# 145388

cc: Mr. Charley C. Harrist
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