



August 15, 2001

Mr. K. Scott Oliver
Assistant Criminal District Attorney
Civil Section
Bexar County
300 Dolorosa, Suite 4049
San Antonio, Texas 78205-3030

OR2001-3597

Dear Mr. Oliver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150770.

The Bexar County Civil Service Commission (the "commission") received a request for "access to copies of the grievances and other information related to Bexar County Detention Officers who were disciplined including suspensions, demotions, terminations or the like during the previous four (4) years." The requestor also seeks any annual or other periodic reporting regarding complaints against detention officers and other personnel of the Bexar County Adult Detention Center, Bexar County Sheriff's office, and the names, addresses, and telephone numbers of all personnel of the sheriff's office who were terminated or otherwise separated from employment from the Bexar County Adult Detention Center for the last four years. You claim that all of the requested information is excepted from disclosure under section 552.103 of the Government Code, and that portions are excepted under sections 552.024, 552.101 and 552.117 of the Government Code.

Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why any 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 specific information requested or representative

samples, labeled to indicate which exceptions apply to which parts of the documents. Although you have submitted to this office documents in support of your arguments under section 552.103, you did not submit a copy of the requested information or a representative sample of such information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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). Compelling reasons exist when the information is made confidential by law or affects the interest of a third party. Open Records Decision No. 630 at 3 (1994). In this instance, you claim that the requested information is excepted under section 552.103, the "litigation exception." Section 552.103, however, is a discretionary exception and may be waived by a governmental body.¹ Therefore, section 552.103 does not provide a compelling reason to overcome the presumption of openness. You also argue that a portion of the requested information is excepted under sections 552.101 and 552.117, and that driver's license information is also confidential.² Sections 552.101, 552.117 and 552.130 present compelling reasons to overcome the presumption of openness. However, because you have not submitted the requested information, we have no basis for finding it confidential. Thus, we have no choice but to order the information released pursuant to section 552.302. 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

¹Discretionary 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. 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding); 522 at 4 (1989) (discretionary exceptions in general).

²Section 552.130 of the Government Code makes driver's license information confidential.

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 A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 150770

Enc. Submitted documents

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(w/o enclosures)