



October 5, 2001

Ms. Leigh Porter  
Assistant Criminal District Attorney  
Smith County Courthouse  
100 N. Broadway, #304  
Tyler, Texas 75702

OR2001-4493

Dear Ms. Porter:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152895.

Each of the four County Commissioners of Smith County (the "county commissioners") received a request for information relating to continuing education courses that the commissioners have completed. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted. We also received comments from the requestor. *See* Gov't Code § 552.304 (permitting interested person to submit comments stating why information at issue in request for attorney general decision should or should not be released).

We must first address the requestor's assertion that he previously requested the same information that the county commissioners now seek to withhold. The requestor contends that an attorney general decision should have been requested in connection with the previous request for information and that the responsive information must now be released. The requestor provided this office with copies of his previous correspondence with the Interim Personnel Director of Smith County, including (1) the requestor's letter dated July 11, 2001, requesting copies of all continuing education that the county commissioners have completed since each commissioner took office and of each certificate earned; (2) a return receipt indicating that the requestor's letter was received on July 12, 2001; and (3) a letter dated July 13, 2001, from the Interim Personnel Director, informing the requestor that the personnel director checked the county commissioners' personnel files for copies of all continuing education records and that those files contained no records of this kind. The personnel director advised the requestor to submit an additional request to each of the county commissioners.

On receipt of the July 11 request for information, the personnel director also was obligated to determine whether each of the county commissioners held or had access to any responsive information. *See* Gov't Code §§ 552.201, .202. The dates of the submitted representative sample documents indicate that the county commissioners were in possession or control of these documents when the July 11 request for information was received. *See id.* §§ 552.221, .228; Open Records Decision No. 561 at 8 (1990) (governmental body must make good faith effort to relate a request to information that it holds). We therefore agree that the requestor's July 11 request obligated the county commissioners to either ask for an attorney general decision or release the requested information. *See* Gov't Code § 552.301(a).

Under section 552.301(b) of the Government Code, "[t]he governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the 10<sup>th</sup> business day after the date of receiving the written request." Under section 552.302, "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information."

The requestor demonstrates that his July 11 request was received on July 12, 2001. You requested this decision on behalf of the county commissioners by letter dated July 31, 2001. Thus, the county commissioners did not request this decision within ten business days of July 12, the date of the personnel director's receipt of the July 11 request, as required by section 552.301(b). Therefore, the requested information is presumed to be public and must be released under section 552.302, unless there is a compelling reason why it should be withheld from disclosure. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ).

The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or that third party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See* Open Records Decision No. 542 at 4 (1990) (stating that litigation exception does not implicate third party rights and may be waived by governmental body). Thus, a claim under section 552.103 is not a compelling reason for non-disclosure under section 552.302. Moreover, you do not assert nor are we aware of any statute that makes confidential information pertaining to the completion of continuing education courses under section 81.0025 of the Local Government Code. Therefore, the county commissioners must release the requested information under section 552.302.

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).

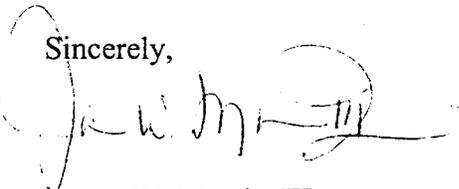
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 152895

Enc: Submitted documents

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(w/o enclosures)