



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

January 22, 2003

Ms. Gail Kikawa McConnell  
Assistant District Attorney  
9<sup>th</sup> Judicial District  
301 North Thompson, Suite 106  
Conroe, Texas 77301-2824

OR2003-0433

Dear Ms. McConnell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175329.

The Montgomery County Sheriff's Department (the "sheriff"), whom you represent, received a request for the "complete personnel file" for a named employee, "an accounting of all of [the employee]'s assignments and the time span that he held each position," and all information regarding the employee in relation to a specified internal investigation. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.102, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we address a procedural matter. You state that copies of the employee's personnel file and the record of his assignments have been prepared for release, with information redacted from the copies "in accordance with [s]ections 552.101 and 552.117 [of the Government Code]." Under section 552.301 of the Government Code, "[a] governmental body that receives a written request for information that it wishes to withhold from public

---

<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions." Gov't Code § 552.301(a). Furthermore, a governmental body must provide this office with a copy or representative sample of the information it wishes to withhold as well as comments explaining why the information is protected from disclosure under an exception. *Id.* § 552.301(e). You have not sought a ruling from this office regarding whether the information you redacted in the personnel file and record of assignments is within an exception to disclosure. Furthermore, although you provided this office with a representative sample of the internal investigation file, you did not provide this office with a copy or representative sample of the employee's personnel file or record of assignments. Because you have not complied with section 552.301 with respect to this information, the information is presumed public. Gov't Code § 552.302.

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). Because you have not provided arguments to this office for withholding the requested personnel file and employee assignment information and you have not provided this office with a copy of the information, except as otherwise noted below, we cannot find that a compelling reason exists for withholding any of this information.

We note that the sheriff may withhold information excepted from disclosure under section 552.117(2) in reliance upon a previous determination by this office. In Open Records Decision No. 670 (2001), this office concluded that, under section 552.117(2), a governmental body may withhold the home address, home telephone number, personal cellular phone number, personal pager number, social security number, and family member information of a "peace officer" as set forth in article 2.12 of the Texas Code of Criminal Procedure without requesting a decision from this office. Therefore, assuming the named employee is a peace officer, we find that you must withhold under section 552.117(2) the types of information described in Open Records Decision No. 670. Regarding any other information redacted from the requested personnel file and employee assignment records,

including the information redacted "in accordance with [section] 552.101" however, we have no choice but to order it released pursuant to section 552.302.<sup>2</sup>

We note that the submitted records include information that is subject to section 552.022. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law. The information that you submitted to us for review is a completed report or investigation, which falls into one of the categories of information made expressly public by section 552.022. See Gov't Code § 552.022(a)(1). Section 552.022(a)(1) states that a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it is excepted under section 552.108 of the Government Code or is expressly confidential under other law.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending criminal investigation being conducted by the Federal Bureau of Investigation (the "FBI"). You further state that the Internal Affairs (IAF) file of the sheriff has been forwarded to the FBI. Based upon your representation, we conclude that the release of the information at issue would interfere with the detection, investigation, or prosecution of crime, and therefore, it may be withheld under section 552.108(a)(1). See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 372 at 4 (1983) (law enforcement exception may be invoked by

---

<sup>2</sup>If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below. We caution that the distribution of confidential information constitutes a criminal offense. See Gov't Code § 552.353.

any proper custodian of information relating to an incident allegedly involving criminal conduct that remains under active investigation or prosecution).<sup>3</sup>

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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

---

<sup>3</sup>As our ruling is dispositive, we do not address your remaining arguments.

Ms. Gail Kikawa McConnell - Page 5

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 175329

Enc. Submitted documents

c: Ms. Ginger Jenkins  
Observer Newspapers  
P.O. Box 609  
Conroe, Texas 77305-0609  
(w/o enclosures)