



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

February 10, 2003

Ms. Sheri Bryce Dye  
Assistant Criminal District Attorney  
Bexar County Justice Center  
300 Dolorosa, Fifth Floor  
San Antonio, Texas 78205-3030

OR2003-0896

Dear Ms. Dye:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176303.

Bexar County (the "county") received a request for a variety of information pertaining to the offices of constable precincts one through five and Justice of the Peace #1, Place 3 for a specified period of time. You claim that the county may withhold the requested information because the request for information was not made in accordance with the Public Information Act (the "Act"). In the alternative, you claim that the requested information is excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered your arguments.

Initially, we address your claim that the county may withhold the requested information in this instance because the request for information was not made in accordance with the Act. You state that the "request is not an open records request, as it does not mention the Open Records Act, is unsigned, not dated, and gives no contact information regarding the requestor such as address, telephone number, etc." We note that a governmental body must make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990). Generally, a request for information need not name the Act nor be addressed to a governmental body's officer for public information in order to be a valid request for information under the Act. *See* Open Records Decision Nos. 497 at 3 (1988), 44 at 2 (1974). Furthermore, a hyper technical reading of the Act does not effectuate the purpose of the Act. *See id.* A written communication that reasonably can be judged to be a request for public information is a request for information for purposes of the Act. *See*

*id.* In this instance, we find that the written communication provided to the county by the requestor can reasonably be judged as a request for public information for purposes of the Act. Accordingly, we conclude that the county may not withhold the requested information in this instance on the basis that the communication provided to the county was not made in accordance with the Act.

Next, we address the procedural requirements of section 552.301 of the Government Code. Section 552.301(e) provides that a governmental body that requests an attorney general decision under section 552.301(a) must, within a reasonable time, but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general, among other items, a copy of the specific information requested or representative samples of the information, if a voluminous amount of information was requested, labeled to indicate which exceptions apply to which parts of the information. *See* Gov't Code § 552.301(e). To date, the county has not submitted to us a copy of the specific information requested or representative samples of such information. Therefore, we find that the county has failed to comply with section 552.301 of the Government Code in requesting a decision from our office with regard to the requested information.

Because the county failed to comply with the procedural requirements of section 552.301 in requesting this decision, the information at issue is now presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The county must demonstrate a compelling interest in order to overcome the presumption that the requested information is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the requested information confidential or when third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although the county claims that the requested information is excepted from disclosure pursuant to section 552.103 of the Government Code, we note that this exception to disclosure is a discretionary exception that may be waived.<sup>1</sup> Thus, section 552.103 does not

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<sup>1</sup> Discretionary 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. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 473

constitute a compelling interest that is sufficient to overcome the presumption that the requested information is now public. Accordingly, we conclude that the county may not withhold any portion of the requested information under section 552.103 of the Government Code. Consequently, the county must release to the requestor the entirety of the requested 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).

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(1987) (governmental body may waive section 552.111), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

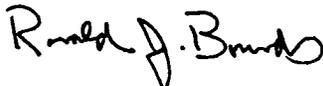
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If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 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 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 176303

c: Mr. Les Mendelsohn  
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(w/o enclosures)