



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 8, 2003

Ms. Allyson Mitchell
Assistant Criminal District Attorney
Anderson County
500 North Church Street
Palestine, Texas 75801

OR2003-2343

Dear Ms. Mitchell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179012.

The Dogwood Trails Narcotics Task Force (the "task force") received a request for six categories of information regarding a mediated settlement agreement between the task force and Hubert and Doris Robinson. The task force informed the requestor that it did not have any documents responsive to items two through six of the request. You claim that the information responsive to the first item in the request, the insurance deductible cost, is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

As background information, you tell this office that the task force and several police departments, sheriff's departments, cities and counties were sued by Doris Robinson based on a mistakenly executed search and arrest warrant at her home. You state that in a particular order during the pre-hearing stages of the suit, the presiding judge ruled that the task force was not considered an entity for purposes of the lawsuit, and as such could not be a named party. The individual officers assigned to the task force were a part of the suit and could be named as parties. You further state that during court-ordered mediation, each governmental body was dismissed from the suit, and the individual officers and their insurance representatives reached a settlement agreement. You inform us that the deductible bill is a loss payment which is the amount the task force, through the officers, owes the insurance company thus far for settling the suit. You argue that because the settlement agreement was between the Robinsons and the individual officers, it is not a settlement agreement involving a governmental entity and therefore is not available to the public. See Gov't Code §§ 552.022(a)(18) (a settlement agreement to which a governmental body is a party is public information and not excepted from required disclosure unless expressly confidential under other law), 2009.054(c) (the confidentiality of communications made during the course of an alternative dispute resolution procedure does not apply to a final written agreement in

which a governmental body is a signatory; such agreement is subject to disclosure under chapter 552 of the Government Code). You further argue that confidentiality was an express term of the settlement agreement and therefore release of the task force's deductible bill would be in direct violation of the settlement agreement.

Initially, we note that the Public Information Act (the "Act") generally makes public the records of governmental bodies. Gov't Code §§ 552.001, .003, .021, .221. The Act defines "governmental body" in pertinent part as

the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.

Id. § 552.003(1)(A)(xii). "Public funds" means funds of the state or of a governmental subdivision of the state. *Id.* § 552.003(5). Thus, the task force would be considered a governmental body subject to the Act if it spends or is supported in whole or in part by public funds. The determination of whether an entity is a governmental body for purposes of the Act requires an analysis of the facts surrounding the entity. *See Blankenship v. Brazos Higher Educ. Auth., Inc.*, 975 S.W.2d 353, 360-362 (Tex. App.-Waco 1998, pet. denied). Further, in Attorney General Opinion JM-821 (1987), this office concluded that "the primary issue in determining whether certain private entities are governmental bodies under the Act is whether they are supported in whole or in part by public funds or whether they expend public funds." Attorney General Opinion JM-821 at 2 (1987).

You inform us that the task force consists of peace officers who are employees of different law enforcement agencies. You also state that the officers work together at the task force, but are paid by the agency to which they are assigned. You state that two of the officers are assigned from the Texas Department of Public Safety, one is assigned from the Palestine Police Department, one is assigned from the Anderson County Sheriff's Department and the rest of the agents are grant funded. Cherokee County contributes money to the Task Force. As such, the Task Force works in Cherokee County as well.

Based on these representations, we conclude the task force falls within the scope of the Act as a governmental body because it receives public funds from various other governmental entities. The court's determination that the task force was not an entity for purposes of the lawsuit is not dispositive of whether the task force is considered a governmental body under the Act. As the task force is comprised of employees of governmental bodies, each of whom is supported by public funds, and it receives funding from Cherokee County, we find that the task force is a governmental body under the Act.

Section 552.021 of the Government Code provides for public access to "public information." Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." The insurance deductible bill is a record of the task force, which, as we noted above, is a

governmental body. Therefore, pursuant to section 552.002, the deductible bill is “maintained . . . by a governmental body” and is subject to the Act. *See* Gov’t Code § 552.002(a)(1).

You argue that the submitted information should be withheld from disclosure under section 552.101 of the Government Code because a condition to the settlement agreement is that the terms remain expressly confidential to the involved parties. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” However, information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision No. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”). Consequently, the information at issue must be released, notwithstanding any agreement specifying otherwise.

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 Dep't of Pub. 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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 179012

Enc. Submitted documents

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