OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 19, 2003

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Lubbock County
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2003-4230

Dear Ms. Clarke:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183087.

The Lubbock County Sheriff (the "sheriff") received a written request for records reflecting any felony or misdemeanor charges on four named individuals. You contend that the requested information is excepted from required disclosure pursuant to section 552.101 of the Government Code.

Initially, we note that when a gb receives a written request for information, the agency must respond to the request by either promptly making the information available or seeking an attorney general decision if the agency seeks to withhold the information. Gov't Code section 552.221, .301. A governmental body may not refuse to comply with an open records request merely because it would be difficult to do so. Industrial Found. v. Texas Indus. Accident Bd., 540S.W.2d 668, 687 (Tex. 1976), cert. denied, 430 U.S. 931 (1977); Attorney General Opinion JM-672 (1987). In order to withhold information, information requested under the Act must fall within an exception to public disclosure.

Next, we note that section 552.301 of the Government Code dictates the procedure that a governmental body must follow when it seeks a decision from the attorney general as to whether requested information falls within an exception to disclosure. Under section 552.301, the governmental body must submit to this office 1) "written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld," 2) "a copy of the written request for information," 3) "a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date," and 4) "a copy of the specific information

requested, or . . . representative samples of the information if a voluminous amount of information was requested." Gov't Code § 552.301(e)(1)(A), (B), (C), (D). Otherwise, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302.

In this instance, you have failed to comply with all of the section 552.301 requirements with respect to the requested information. Therefore, the requested information is presumed to be public and must be released unless there is a compelling reason to withhold the information from the public. Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Consequently, we have no choice but to order the requested information released pursuant to section 552.302, to the extent that any such information is held by the sheriff. If you believe that any existing responsive information is confidential and may not lawfully be released, then you must challenge this 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 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,

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/RWP/sdk

Ref: ID# 183087

Enc: Submitted documents

c: Ms. Mary Drummond
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(w/o enclosures)