



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

August 12, 2003

Mr. David Kemp  
Assistant County Attorney  
Potter County  
500 South Fillmore, Room 303  
Amarillo, Texas 79101

OR2003-5601

Dear Mr. Kemp:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185781.

The Potter County Sheriff's Office (the "sheriff's office") received two requests from the same requestor. The first request asked for documents relating to (1) plumbing work at the Potter County Detention Center (the "detention center") from April 16 through 26, 2003, (2) requests for medical treatment, excluding identifying information of offenders, for five specified time periods, (3) the dates that the medical treatments referenced in item two were rendered, and (4) names and costs to offenders of the over-the-counter medications available at the detention center. The second request asks for the amounts paid by offenders for over-the-counter medications during five specified time periods. You state that you have released information responsive to item four of the first request and that no additional information exists that would be responsive to the second request. You claim that the information responsive to items one, two, and three of the first request is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

At the outset, we note that the sheriff's office has failed to comply with the requirements of section 552.301. Section 552.301(b) provides that "the governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request." Section 552.301(e) further requires a governmental body to submit to this office within fifteen business days of receiving an open records request (1) general 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 or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents.

You state that you received the first request for information on May 21, 2003. You submitted a brief to this office on June 4, 2003 containing blank medical forms that you claim are representative samples of information responsive to items two and three of the first request. However, we conclude that blank forms cannot serve as adequate representative samples of the information requested in items two and three of the first request. Further, you asked the requestor to clarify or narrow item one of her request on June 4, 2003. *See Gov't Code § 552.222(b)* (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). You do not indicate when the sheriff's office received the requestor's response. However, the requestor's response to the request for clarification is dated June 4, 2003. Therefore, we assume the sheriff's office received the requestor's response on June 4, 2003, and determine that the sheriff's office's deadlines for requesting a ruling on item one were not tolled. *See Gov't Code § 552.301(e)(1)(C)*; *see also* Open Records Decision No. 663 (1999) (determining that during interval in which governmental body and requestor communicate in good faith to narrow or clarify request, the Act permits a tolling of deadlines imposed by section 552.301). You did not submit information responsive to item one of the first request or raise section 552.108 as an exception until June 19, 2003, twenty-one business days after the initial request for information. Therefore, upon review of the submitted information, we find that the sheriff's office failed to raise section 552.108 within the ten-business day deadline as required by section 552.301(b) and failed to submit a copy or adequate representative sample of any of the requested information for our review within the fifteen-business day deadline as required by section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to meet the deadlines imposed by section 552.301(b) and (e) results in the legal presumption that the information is public and must be released. 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). You argue that the information responsive to items two and three of the first request is confidential under section 552.101 in conjunction with chapter 159 of the Occupations Code. However, because you have failed to submit the specific information requested or an adequate representative sample thereof, we have no basis for finding it confidential. Therefore, to the extent the sheriff's office possesses information responsive to items two and three of the first request, it must release such information to the requestor. You argue that the information

responsive to item one of the first request is excepted by section 552.108 of the Government Code. Because you have not asserted a compelling reason for withhold the information responsive to item one of the first request under section 552.108, you may not withhold the information under that exception. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive section 552.108); 522 (discretionary exceptions generally). Thus, we have no choice but to order the information responsive to item one of the first request released per section 552.302 of the Government Code. If you believe the requested information is confidential and may not lawfully be released, you must challenge this decision 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,



Jennifer E. Berry  
Assistant Attorney General  
Open Records Division

JEB/sdk

Ref: ID# 185781

Enc: Submitted documents

c: Ms. Leeann Kossey  
NBC 4, KAMR  
1015 South Filmore  
Amarillo, Texas 79101  
(w/o enclosures)