ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2003

Ms. Julie Joe
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2003-7624

Dear Ms. Joe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190114.

The Travis County Constable's Office, Precinct Five (the "constable") received a request for the following information:

(1) List of employees, title, pay, tenure, amount of overtime and any other payment of funds for the past two years.

(2) Any and all contracts or agreements relating to the advertising in the Yellow Pages or any other publication or media.

(3) Any and all records relating to payments for advertising any special services performed by the Constable's Office.

(4) Any and all contracts or agreements relating to website development, maintenance or any other internet related services.

(5) Any and all records relating to payments for website development, maintenance or any other internet related services.

(6) Any and all records detailing employee duties regarding the www.constable5.com website.

(7) Any and all records relating to complaints, discipline, reprimand, suspension or termination of any employee of the Constable's Office within the past two years.

(8) Information detailing the number of executions or services performed by the Constable's Office for the past two years and whether the service was provided in person or by some other method.

(9) Records relating to the revenue and expenses for the Constable's Office for the past two years.

You note that some of the requested information will be released to the requestor. You claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that section 552.301(e) provides that a governmental body is required 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 have not submitted written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld. Likewise, you have not submitted the information responsive to the request or representative samples thereof. Thus, you have failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. Gov't Code § 552.302; *see also 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); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977).

Because you have not submitted the requested information or a representative sample for our review, we have no basis for finding it confidential. Thus, we have no choice but to order the information released in accordance with section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge the 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).

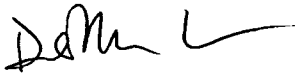
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 190114

c: Ms. Nanci Wilson
KEYE TV, CBS Austin
10700 Metric Boulevard
Austin, Texas 78758