



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2003

Mr. Craig Stoddart
Assistant Criminal District Attorney
Rockwall County
1101 Ridge Road, Suite 105
Rockwall, Texas 75087

OR2003-8255

Dear Mr. Stoddart:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191119.

The Rockwall County Auditor (the "auditor") received a request for (1) a list of any funds held by the auditor that are categorized as unclaimed or abandoned, and (2) a copy of county checks or warrants that have been outstanding for more than three months and that may be reissued. You have not submitted information responsive to category one of the request.¹ To the extent information responsive to category one of the request exists, we presume you have released it. If you have not, you must do so at this time. *See Gov't Code §§ 552.301, .302.* You claim that the submitted information is confidential under article 35.29 of the Texas Code of Criminal Procedure. We have considered your argument and reviewed the submitted sample of information.²

¹ We note that you have requested additional time to compile the requested information. Section 552.301(e) of the Government Code requires that a governmental body submit to this office the specific information requested or a representative sample within fifteen business days of receiving the request for information. The deadlines contained in section 552.301 are fixed by statute and cannot be extended by this office or altered by an agreement. *See Open Records Decision No. 541 at 3 (1990)* ("[T]he obligations of a governmental body under the [predecessor to the Public Information] act cannot be compromised simply by its decision to enter into a contract. *See Attorney General Opinion JM-672 (1987); Open Records Decision No. 514 (1988).*").

² We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988).* This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” You claim that the responsive information is confidential under article 35.29 of the Code of Criminal Procedure. Article 35.29 provides as follows:

Information collected by the court or by a prosecuting attorney during the jury selection process about a person who serves as a juror, including the juror’s home address, home telephone number, social security number, driver’s license number, and other personal information, is confidential and may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel except on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court in which the person is serving or did serve as a juror. On a showing of good cause, the court shall permit disclosure of the information sought.

Article 35.29 makes confidential certain personal information pertaining to those individuals who actually served on the petit jury in a criminal trial. You do not indicate whether the individuals whose information is at issue actually served on the petit jury in a criminal trial. Furthermore, article 35.29 lists who may not disclose such information. The county auditor is not among those parties who may not disclose under article 35.29. Therefore, we find article 35.29 inapplicable to the submitted information.

We note, however, that the submitted checks contain account numbers. Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. The auditor must, therefore, withhold the account numbers we have marked under section 552.136.

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# 191119

Enc: Submitted documents

c: Mr. Benjamin Tarver
Unclaimed Funds Recovery Services
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(w/o enclosures)