



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 19, 2003

Ms. Mary E. Reveles  
Assistant County Attorney  
Fort Bend County  
301 Jackson Street, Suite 728  
Richmond, Texas 77469-3108

OR2003-9236

Dear Ms. Reveles:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193143.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for 11 categories of information regarding five named officers and Sheriff Milton Wright. You state that three items of the request, seeking the results of investigations and actions taken against three named employees, are encompassed by three other items of the request in which the requestor asks for information regarding investigations of these three employees.<sup>1</sup> Furthermore, you state that no responsive information exists pertaining to item 9 of the request, seeking "auditory tapes, recordings, or videos made by Chief Deputy Craig Brady on Wednesday, June 12, 2002, between the hours of 10:00 a.m and noon." You also state that no responsive information exists pertaining to item 10, seeking memos, reports, and letters "written by Lt. Don Martin to Sheriff Milton Wright" during a specified time period.<sup>2</sup> The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp.*

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<sup>1</sup>Specifically, you advise that information responsive to items 3, 5, and 8 of the request is incorporated into information responsive to items 1, 4, and 7 of the request.

<sup>2</sup>While you also state that the sheriff does not possess information responsive to item 11, seeking memos, reports, and letters "by Chief Deputy Craig Brady to Lt. Bob Martin [or] Sheriff Milton Wright," we note that you have submitted such information to this office for review. Accordingly, we will address the applicability of your claimed exceptions to this information.

*v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). You claim that the remainder of the requested information 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.

Initially, we note that the sheriff has not fully complied with the requirements of section 552.301 of the Government Code in responding to this request. Section 552.301 prescribes procedures that a governmental body must follow when seeking to withhold responsive information from public disclosure. Specifically, the governmental body must seek a ruling from this office and submit, among other things, a copy of the specific information it seeks to withhold or representative samples of that information. See Gov't Code § 552.301. A governmental body need not request an open records determination under section 552.301 if: (1) this office has previously issued a ruling to the governmental body on the precise information at issue or (2) this office has issued a prior determination that the governmental body may withhold a specific category of information without the necessity of requesting a determination from this office. Gov't Code § 552.301(a); see Open Records Decision No. 673 (2001) (discussing standard for issuance of previous determinations); see, e.g., Open Records Decision Nos. 670 (2001) (concluding that all governmental bodies subject to Public Information Act may withhold information that is subject to Gov't Code § 552.117(2) without necessity of seeking decision from this office), 662 (1999) (concluding that Texas Department of Health may withhold certain information under Health & Safety Code § 161.254 without necessity of requesting ruling from attorney general).

In this instance, you have redacted portions of the submitted records without seeking a ruling from this office. It does not appear that the redacted information is subject to a previous determination of this office allowing the sheriff to withhold the information without seeking a ruling. Thus, in accordance with section 552.301 of the Government Code, the sheriff was required to request a ruling on all information you seek to withhold from the requestor. Because you have failed to comply with the procedural requirements of section 552.301 with respect to this information, the information is presumed to be public. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. 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). Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because we are unable to review the redacted information, we have no basis for finding that the redacted information is confidential by law or excepted from disclosure pursuant to your claimed exceptions. Thus, we find the sheriff must release the redacted information to the requestor. If you believe that

the information you redacted is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

We next address your claimed exceptions to disclosure with respect to the remainder of the submitted information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. You state that the submitted documents contain information regarding polygraph examinations. Section 1703.306(b) of the Occupations Code provides that "[a] governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information." Occ. Code § 1703.306. Upon review, however, we find that the submitted documents do not contain any information made confidential under section 1703.306. Accordingly, the sheriff may not withhold any portion of the submitted information pursuant to section 552.101 in conjunction with section 1703.306 of the Occupations Code.

Next, you contend that the submitted information is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the submitted information relates to criminal investigations of three department employees that concluded in final results other than conviction or deferred adjudication. We note that a portion of the information you seek to withhold under section 552.108(a)(2) pertains to a criminal investigation of a department employee.<sup>3</sup> The documents reflect that the sheriff presented the case to the district attorney. You indicate that the district attorney declined to file charges. Accordingly, based on your representations and our review, we find that a portion of the submitted information, which we have marked, is excepted under section 552.108(a)(2).

We note, however that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, the sheriff may not withhold basic information about the investigation at issue pursuant to section 552.108(a)(2).

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<sup>3</sup>The investigation relates to an allegation of the offense of abuse of official capacity. See Penal Code § 39.02.

Next, while you contend that the remaining information you have submitted is also excepted under section 552.108(a)(2), we find you have not established, and the documents do not reflect, that this information relates to a criminal investigation. Section 552.108 generally is not applicable to an internal administrative investigation involving law enforcement officers that did not result in a criminal investigation or prosecution. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, (Tex. App. 2002, no pet. h.); Open Records Decision No. 562 at 10 (1990); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 350 at 3-4 (1982). In this instance, we determine that the remainder of the information you seek to withhold under section 552.108 concerns an internal administrative investigation relating to personnel matters. Therefore, we determine that the sheriff may not withhold any portion of the remaining submitted information pursuant to section 552.108.

We note that the remaining documents contain information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in pertinent part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

We have marked the information that the sheriff must withhold pursuant to section 552.130 of the Government Code.

The remaining information also contains a small amount of information that is excepted under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from required public disclosure the home address, home telephone number, social security number, and the family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. *See* Open Records Decision No. 622 (1994). We have marked the information that the sheriff must withhold under section 552.117(a)(2).

In summary, we have marked information that the sheriff may withhold pursuant to section 552.108(a)(2) of the Government Code, with the exception that basic information must be released. We have marked information that the sheriff must withhold pursuant to sections 552.130 and 552.117(a)(2) of the Government Code. The remainder of the

submitted information, including information that was redacted from the documents prior to submission to this office for review, must be released to the requestor.

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,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 193143

Enc: Submitted documents

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(w/o enclosures)