



ATTORNEY GENERAL OF TEXAS  
G R E G A B B O T T

May 21, 2004

Mr. Leslie Sweet  
Legal Advisor  
Dallas County Sheriff's Department  
133 North Industrial Boulevard, LB 31  
Dallas, Texas 75207-4313

OR2004-4185

Dear Mr. Sweet:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202080.

The Dallas County Sheriff's Office (the "sheriff") received a request for the complete investigative file regarding a named individual. You state that you have released some of the information. You claim that the information submitted as Attachment 3 is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we must address the sheriff's obligations under section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) 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 10th business day after the date of receiving the written request.

In your letter dated March 14, 2004, you state that you are requesting an open records decision within ten business days of receiving the written request. You do not, however, inform us of the actual date the sheriff received the request for information as required by section 552.301 of the Government Code. *See* Gov't Code § 552.301(e)(1)(C) (governmental body that requests attorney general decision must submit signed statement as to date on which written request was received or evidence sufficient to establish that date). The requestor's letter is dated March 2, 2004. Since you do not inform us when you received the request for information, we must presume that you received it on that date. Your request for a decision bears a postmark indicating that it was mailed on March 17, 2004. Consequently, we find that the sheriff failed to request a decision within the ten business day period mandated by section 552.301(b) of the Government Code. Because the request for a decision was not timely submitted, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome this presumption of openness, the sheriff must provide compelling reasons why the information should not be disclosed. *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 claim that Attachment 3 is excepted from disclosure under section 552.103 of the Government Code. However, section 552.103 is a discretionary exception that does not provide a compelling reason to overcome the presumption that the information is public. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Therefore, you may not withhold the information under section 552.103 of the Government Code. You also claim that Attachment 3 is excepted from disclosure under section 552.101 of the Government Code. Since the applicability of section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address your arguments against disclosure for the information at issue.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Attachment 3 is an internal affairs investigation conducted by the sheriff regarding the strip search of two female employees. The investigation at issue pertains solely to the work behavior of public employees. Since there is a legitimate public interest in the work behavior of public employees and the conditions for their continued employment, the sheriff may not withhold Attachment 3 under section 552.101 and common law privacy. *See* Open Records Decision No. 438 (1986); *see also* Open Records Decision Nos. 484 (1987) (public interest in knowing how police departments resolve complaints against police officer ordinarily outweighs the officer's privacy interest), 444 (1986) (concluding that public has obvious interest in having access to information concerning performances of governmental employees, particularly employees who hold positions as sensitive as those held by members of law enforcement), 423 at 2 (1984) (scope of public employee privacy is narrow), 405 at 2-3 (1983) (public has interest in workplace conduct of public employee), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom not protected under statutory predecessor to section 552.101), 208 at 2 (1978) (information relating to complaint against public employee and disposition of the complaint is not protected under either the constitutional or common law right of privacy). Furthermore, even if we determined that some of the submitted information was private, the requestor would still have right access to such information as the representative of the subjects of the information. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Therefore, the sheriff must release Attachment 3 in its entirety to the requestor.<sup>1</sup>

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

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<sup>1</sup>We note that some of the documents include information that would ordinarily be withheld under laws and exceptions intended to protect the privacy interests of the requestor's clients. However, as the representative of the subjects of the information, the requestor has a special right of access to it. *See* Gov't Code § 552.023(b). Therefore, if the sheriff receives a future request for this information from an individual other than the subjects of the information or their authorized representative, the sheriff should again seek our decision.

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,



Melissa Vela-Martinez  
Assistant Attorney General  
Open Records Division

MVM/sdk

Ref: ID# 202080

Enc. Submitted documents

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(w/o enclosures)