



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2004

Mr. Harold M. Streicher
Assistant County Attorney
Fayette County and District Attorney's Office
151 North Washington
La Grange, Texas 78945

OR2004-7155

Dear Mr. Streicher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 207760.

The Fayette County Sheriff's Office (the "sheriff") received a request for four categories of information pertaining to commissioned law enforcement personnel that have left employment with the sheriff, voluntarily or involuntarily, during a certain period of time. You state that the sheriff does not maintain some of the requested information.¹ You also state that the sheriff is withholding some of the requested information pursuant to a previous determination that our office granted all governmental bodies in Open Records Decision No. 670 (2001). You claim that some of the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample documents.²

¹ We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975); *Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

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.

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.³ Section 1701.452 requires a law enforcement agency to submit a report to the Commission on Law Enforcement Officer Standards and Education (the "commission") regarding an officer licensed under chapter 1701 who either resigns from the law enforcement agency or whose appointment with the law enforcement agency is terminated. *See* Occ. Code §1701.452. Section 1701.454 provides, in relevant part:

(a) A report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552 of the Government Code.

Occ. Code § 1701.454(a). Based on your arguments and our review of the submitted information, we find that the information that you submitted to us for review as Exhibit B is encompassed by section 1701.454. Accordingly, we conclude that the sheriff must withhold Exhibit B pursuant to section 552.101 of the Government Code in conjunction with section 1701.454. However, we also find that no other portion of the submitted information constitutes such a report or statement submitted to the commission. Accordingly, we also conclude that no other portion of the submitted information may be withheld pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. Consequently, the sheriff must release to the requestor the remaining submitted information that is at issue.

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

³ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/krl

Ref: ID# 207760

Enc. Submitted documents

c: Mr. Russell Bliese
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(w/o enclosures)