ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 1, 2005

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

OR2005-10773

Dear Ms. Joe:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 237159.

The Travis County Sheriff's Office (the "sheriff") received a request for two specified reports. You claim that the requested information is excepted from disclosure under sections 552.101 through 552.147 of the Government Code.

The Act imposes a duty on a governmental body seeking an open records decision to submit the following information within fifteen business days of receiving the written 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. Gov't Code § 552.301(e). The sheriff did not, however, submit arguments to this office explaining the applicability of its claimed exceptions, nor did it submit a copy or representative samples of the information at issue. Thus, the sheriff failed to comply with the requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301(e) results in the legal

presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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). Generally, a governmental body can overcome the presumption that information is public under section 552.302 by demonstrating that the information is confidential by law or that its disclosure affects third party interests. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because you have failed to comply with the procedural requirements of the Act, the sheriff has waived all of its discretionary exceptions to disclosure. *See* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Although the sheriff also raises mandatory exceptions to disclosure, because you have failed to submit any of the responsive information for our review, we have no basis for finding the information confidential under these exceptions. We, therefore, conclude that the sheriff must release the information at issue to the requestor. If you believe the information is confidential and may not lawfully be released, you must challenge this 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,

Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 237159

Enc. Submitted documents

c: Pickles Express Documents
P.O. Box 276
Josephine, Texas 75164
(w/o enclosures)