ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 12, 2006

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

OR2006-03678

Dear Ms. Sweet:

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# 246136.

The Dallas County Sheriff's Department (the "sheriff") received a request for a copy of the computer graphic or art file used by the sheriff to prepare its departmental logo. You argue that the sheriff is not required to provide the requested information in the requested format pursuant to section 552.228 of the Government Code. We have considered the submitted arguments. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that persons may submit comments stating why information should or should not be released).

Under section 552.301(e), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure under the Act is required to submit to this office within fifteen business days of receiving the 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 has failed to submit responsive

information for our review, and therefore has failed to comply with the requirements of section 552.301(e) in requesting this ruling.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *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 section 552.302); Open Records Decision No. 319 (1982). Although you raise section 552.228(b)(3) of the Government Code, which provides that "[a] governmental body shall provide a copy [of the requested information] in the requested medium if: . . . (3) provision of a copy of the information in the requested medium will not violate the terms of any copyright agreement between the governmental body and a third party," this section is not an exception to disclosure under the Act. Gov't Code § 552.228(b)(3); *see also* Gov't Code § 552.301(a) (noting that exceptions to disclosure under Act are found at subchapter C of chapter 552 of Government Code). Thus, section 552.228 itself does not provide a basis for withholding information from disclosure. As you have raised no exception against disclosure and have not submitted the requested information, we have no basis for finding it may be withheld. Thus, we have no choice but to order the information released pursuant to section 552.302. *But see* Attorney General Opinion JM-672 (1987) (a custodian of public records must allow inspection of copyrighted materials unless an exception applies to the information, but is not required to furnish copies of records that are copyrighted).

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

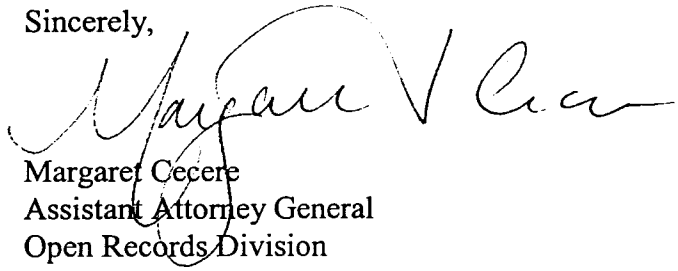
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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,



Margaret Cecere
Assistant Attorney General
Open Records Division

MC/sdk

Ref: ID# 246136

Enc. Submitted documents

c: Mr. Avi S. Adelman
Dallas Creative Inc.
P.O. Box 721376
Dallas, Texas 75372-1376
(w/o enclosures)