



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 12, 2006

Ms. Mary J. Ibarra  
Assistant Criminal District Attorney  
Bexar County District Attorney's Office  
300 Dolorosa, Suite 4049 - Civil Section  
San Antonio, Texas 78205-3030

OR2006-04916

Dear Ms. Ibarra:

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# 248863.

Bexar County (the "county") received two requests for "copies of all of the Bexar County Sheriff's Department's Liability Insurance Policies, including the Declaration Sheet and all umbrella or excess coverage in effect, which provide(d) coverage from December 1, 2005, to the present."<sup>1</sup> You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code.<sup>2</sup> We have considered the exceptions you claim. We have also considered comments submitted by the requestors. *See* Gov't Code § 552.304 (providing that persons may submit comments stating why information should or should not be released).

Initially, we must address one of the requestor's assertions that the county did not provide notice of the county's request for a decision from this office within the ten-business-day time

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<sup>1</sup>As you have failed to submit copies of either of the written requests for information, we take our description from your brief.

<sup>2</sup>You also raise section 552.022 of the Government Code as an exception against disclosure. Section 552.022 provides a list of eighteen categories of information that are expressly public and may not be withheld unless confidential under other law. *See* Gov't Code § 552.022. Accordingly, this section is not an exception to disclosure under the Act.

period mandated under section 552.301(d) of the Government Code. Section 552.301(d) provides in relevant part that “[t]he governmental body must ask for the attorney general’s decision and state the exceptions that apply . . . not later than the 10<sup>th</sup> business day after the date of receiving the written request [for information].” You inform us that you received this particular request for information on March 20, 2006; however, you do not provide any documentation in support of this claim.

In addition, we note that under section 552.301(e) of the Government Code, 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). In this case, the county has not submitted a copy of either written request for information, nor have you submitted copies or representative samples of the responsive information. Thus, we find that you failed to comply with the procedural requirements of section 552.301.

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). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.103 of the Government Code is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See* Gov’t Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Because you have not submitted any responsive information or a copy of either written request for information, we determine that the county has waived its claim under section 552.103. Additionally, the county raises section 552.101 of the Government Code as an exception to disclosure. This exception can provide a compelling reason for overcoming the presumption of openness. *See* Open Records Decision No. 150 at 2 (1977). However, because you have not submitted any responsive information for our review, we have no basis to find that the information is excepted from disclosure pursuant to section 552.101. We therefore conclude that the county

must release the responsive information to the requestors. If you believe the information is confidential and may not lawfully be released, you must challenge the 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).

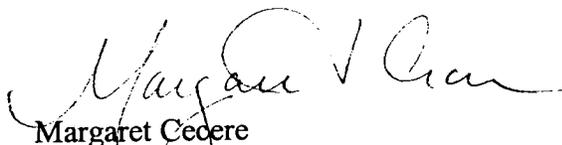
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Margaret Cecere  
Assistant Attorney General  
Open Records Division

MC/er

Ref: ID# 248863

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