



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2006

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

OR2006-12219

Dear Mr. 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# 262119.

The Dallas County Sheriff's Office (the "sheriff") received five requests for information pertaining to a specified internal affairs investigation. Some of the requestors also seek (1) all open records requests pertaining to a named employee, (2) information pertaining to a named employee's campaign contributions, and (3) all documents in a named employee's personnel file. You claim that the submitted information is excepted from disclosure under sections 552.102, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have only submitted information pertaining to the completed internal affairs investigation for our review. To the extent additional responsive information existed on the date that the sheriff received the instant requests, we assume that the sheriff has released it to the requestors. If the sheriff has not released any such information, the sheriff must release it to the requestors at this time. *See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).*

Next, we must address the sheriff's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records 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.

Although you do not inform this office when the sheriff received the first request for information, we note that it appears to have been received by the sheriff via e-mail on July 25, 2006. Based on this date, the tenth business day following the sheriff's receipt of the first request was August 8, 2006. *See id.* § 552.301(e)(1)(C) (a governmental body is required to submit to this office a signed statement or sufficient evidence showing the date the governmental body received the written request). While your request for a ruling is dated August 8, 2006, it bears a postmark date of August 11, 2006. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude that the sheriff failed to comply with the procedural requirements mandated by section 552.301. *See id.* § 552.301(b).

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 id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); 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 is a discretionary exception under the Act and does not constitute a compelling reason to overcome the presumption of openness. *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); 665 at 2 n.5 (2000) (discretionary exceptions in general). Also, you have not provided a compelling reason under section 552.108 to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108). Therefore, you may not withhold the submitted information under section 552.103 or 552.108 of the Government Code. Furthermore, you claim that release of the submitted information would "interfere in the officer[']s due process rights of having his appeal heard

by an unbiased civil service commission.” However, you do not raise this claim in conjunction with any exception under the Act and you do not explain how this statement applies to the submitted information. Thus, the sheriff has waived this claim. However, sections 552.102 and 552.117 of the Government Code can provide compelling reasons to overcome the presumption of openness.¹ Accordingly, we will address these exceptions to disclosure.

Section 552.102(a) excepts from required public disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” This exception applies when the release of information would result in a violation of the common-law right to privacy. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref’d n.r.e.). The common-law right to privacy is violated if the information (1) contains highly intimate or embarrassing facts about a person’s private affairs such that its release would be highly objectionable to a reasonable person and (2) is of no legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). However, information about public employees’ job performance or the reason for their dismissal, demotion, promotion, or resignation is not generally excepted from public disclosure. *See, e.g.*, Open Records Decision Nos. 470 (1987) (public employee’s job performance does not generally constitute his private affairs), 455 (1987) (public employee’s job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). After review of your arguments and the submitted information, we find that none of the information at issue may be withheld under section 552.102(a) in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. Therefore, the information we have marked must be withheld under section 552.117(a)(2). The remaining submitted information must be released to the requestors.

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

¹ The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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).

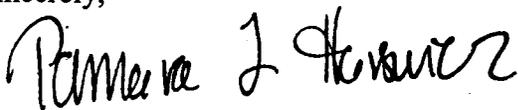
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 262119

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