



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 12, 2008

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

OR2008-06435

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# 309811.

The Dallas County Sheriff's Department (the "sheriff") received a request for the personnel file of a specified employee as well as a list of all deputies working off-duty at a specified location on a specified date. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have redacted portions of the submitted information. Pursuant to section 552.147(b) of the Government Code, all governmental bodies may redact social security numbers of living individuals without requesting a decision from this office. *See Gov't Code § 552.147(b)*. Accordingly, the sheriff may withhold the social security numbers contained within the submitted information under section 552.147. We note that you have also redacted personal information of a peace officer pursuant to section 552.117(a)(2) of the Government Code. The previous determination issued in Open Records Decision No. 670 (2001) authorizes the sheriff to withhold the home addresses and telephone numbers, personal cellular phone and pager numbers, social security numbers, and family member information of its peace officers under section 552.117(a)(2) without the necessity of requesting an attorney general decision.<sup>1</sup> *See Open Records Decision No. 670 at 6*. For the remaining redacted information, we note that pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the

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<sup>1</sup>We note that section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure.

information at issue. Gov't Code §§ 552.301(a), .301(e)(1)(D). You do not assert, nor does our review of the records indicate, that you have been authorized to withhold any of the remaining redacted information without seeking a ruling from this office. *See id.* §552.301(a); Open Records Decision 673 (2000). As such, these types of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the remaining redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the sheriff should refrain from redacting any information it submits to this office in seeking an open records ruling.

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 information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). You submitted a copy of the request for information. The request is not dated. Furthermore, the request bears no date-stamp or other indication of the date on which your office received the request. *See id.* § 552.301(e)(1)(C) (providing that governmental body must submit signed statement as to date on which governmental body received request for information or evidence sufficient to establish that date). You concede that the sheriff failed to request this decision within the ten-day deadline. Consequently, we find that the sheriff 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 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 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 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); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). In failing to comply with section 552.301, the sheriff has waived its claim under section 552.103; therefore, the sheriff may not withhold any of the submitted information under this exception. However, because sections 552.117 and 552.130 of the Government Code can provide compelling reasons to overcome the

presumption, we will address the applicability of these exceptions to the submitted information.<sup>2</sup>

As previously noted, section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Accordingly, the sheriff must withhold the additional information we marked under section 552.117(a)(2) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Gov't Code § 552.130. The sheriff must withhold the Texas motor vehicle record information we have marked under section 552.130.

In summary, the sheriff must withhold the information we have marked under sections 552.117 and 552.130 of the Government Code. With the exception of the information the sheriff is authorized to redact, the remaining information must be released to the requestor.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 challenge 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,



Olivia A. Maceo  
Assistant Attorney General  
Open Records Division

OM/jb

Ref: ID# 309811

Enc. Submitted documents

c: Mr. Charles Clark, Private Investigator  
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(w/o enclosures)