



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 29, 2008

Mr. Michael M. Kelly  
Assistant Criminal District Attorney  
City of Victoria  
205 North Bridge Street, Suite 301  
Victoria, Texas 77901

OR2008-07302

Dear Mr. Kelly:

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# 310803.

The Victoria County Sheriff's Office (the "sheriff") received a request for the name and badge number of all sheriff officers. You claim that the submitted information is excepted from disclosure under sections 552.102, 552.103, 552.108, 552.117, and 552.127 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Initially, we must address the sheriff's procedural obligations under the Act. Subsections (a) and (b) of section 552.301 require a governmental body requesting an open records ruling from this office to "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request." Gov't Code § 552.301(a), (b). You state the sheriff received the request for information on March 4, 2008. However, you did not raise any exceptions to disclosure until March 25, 2008. Consequently, we find that the sheriff failed to comply with the requirements of section 552.301 in requesting this decision.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 from disclosure. 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 may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. See Open Records Decision No. 630 (1994). Although you raise sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions that protect 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); Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the sheriff may not withhold any of the submitted information under section 552.103 or section 552.108 of the Government Code. However, because sections 552.102, 552.117, and 552.127 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address your arguments under these exceptions.

Next, we address your arguments pertaining to section 552.102 and 552.117. Section 552.102(a) of the Government Code 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 Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.). The common-law right to privacy protects information that (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). Section 552.117(a)(2) excepts the home addresses and telephone numbers, social security numbers, and family member information of a peace officer as defined by Article 2.12 of the Code of Criminal Procedure, regardless of whether the officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2); see Open Records Decision No. 622 (1994).

In this instance you acknowledge that section 552.102 and section 552.117 are not expressly applicable to the officer names and badge numbers that you have submitted to this office. Instead you assert that "the advent of the Internet post inception of the [Act] has brought the use of names to an extent that is possible to insert a name and retrieve an address" which "will lead to knowledge of the named personnel's family stripping away all privacy." You further indicate that the home address and family member information somehow deduced using an officer's name would then be confidential pursuant to section 552.117 of the Government Code. However, the Act does not allow information to be withheld from a

requestor based on deductions that can be made from the released information that could reveal otherwise confidential information. *See AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, at 676 (Tex.1995). Because you have failed to establish that either section 552.102 or section 552.117 make the submitted names and badge numbers confidential, you may not withhold the submitted information on either of these bases.

Next you raise section 552.127 of the Government Code, which excepts information from public disclosure if the information identifies a person as a participant in a neighborhood crime watch organization and relates to the name, home address, business address, home telephone number, or business telephone number of the person. *Id.* § 552.127. Again, you acknowledge that section 552.127 is not directly applicable to the submitted information. However, you seek to impart the confidentiality granted under section 552.127 to the submitted names and badge numbers because “our legislature has seen fit to protect those individuals who have formed the crime watch in affiliation or association with a law enforcement agency in this state” and “[s]imilar protection is appropriate to the participating law enforcement agency.” However, we note that section 552.127 applies to private individuals as opposed to officers employed by the state. *Id.* § 552.022(a)(2) (name of public employee is super public information). Further, as you acknowledge, the express language of section 552.127 does not apply to the information submitted in this case, and this office will not imply confidentiality that is not expressly granted in the statute. *See Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).* Accordingly, you may not withhold any portion of the submitted information under section 552.127. As you raise no other exception to disclosure of this information, it 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

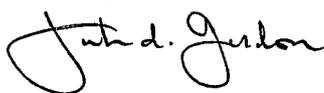
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to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



Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/eeg

Ref: ID# 310803

Enc. Submitted documents

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(w/o enclosures)