



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2011

Ms. Claire Yancey
Assistant District Attorney
Denton County Criminal District Attorney's Office
127 North Woodrow Lane
Denton, Texas 76205

OR2011-12524

Dear Ms. Yancey:

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# 428508.

The Denton County Sheriff's Office (the "sheriff") received a request for the full legal names, dates of birth, job descriptions or titles, departments or divisions, pay grades, badge or identification numbers, and hire dates of all sheriff employees. You indicate the sheriff need not comply with the request pursuant to section 552.028 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.¹

Section 552.028 of the Government Code provides, in relevant part:

(a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility; or

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under [the Act].

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

Gov't Code § 552.028(a)-(b). You assert the requestor made the present request for information on behalf of an inmate. You indicate the individual at issue is an inmate confined in a correctional facility, and you argue the requestor made the present request as a representative of this incarcerated individual. To support your argument, you state, and have provided documentation showing, the requestor is a frequent visitor of the inmate at the correctional facility, the requestor is listed as the inmate's emergency contact with the correctional facility, and the requestor has previously requested information from a different governmental body regarding litigation involving the inmate. However, the fact the requestor may have a close or friendly relationship with the inmate does not in itself establish she submitted the request as an agent of the inmate. As you have not provided any additional information establishing the requestor is in fact acting as an agent of the inmate, we cannot conclude section 552.028 is applicable in this instance. Accordingly, we will consider whether or not any of the submitted information is excepted from disclosure under the Act.

We must address the sheriff's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, the governmental body 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. *See id.* § 552.301(e). In this instance, you state the sheriff received the request for information on June 8, 2011. Although you timely requested a ruling from this office, you did not submit comments explaining your arguments against disclosure or submit a copy of the information requested until June 30, 2011. Thus, we find the sheriff failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you have not claimed any exceptions to disclosure for the requested information, we note some of the information may be excepted under section 552.102 of the Government Code.² Because section 552.102 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception to the requested information.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). The sheriff must withhold the dates of birth we have marked in the requested information under section 552.102(a) of the Government Code. As you have not claimed any exceptions to disclosure for the remaining information, the sheriff must release the remaining information.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions.

Ref: ID# 428508

Enc. Submitted documents

c: Requestor
(w/o enclosures)