



April 5, 2000

Mr. David P. Weeks
Criminal District Attorney
County of Walker
P.O. Box 1659
Huntsville, Texas 77342

OR2000-1314

Dear Mr. Weeks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133892.

You inform us that the Walker County Office of the District Attorney (the “district attorney”) received a request for information about and dispositional histories of letters sent by the Executive Director of the Texas Department of Criminal Justice to this office reporting employee assaults on inmates. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.¹

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,

¹We note that you contend that responsive information “would be in files relating to the specific prosecutions and would be extremely difficult to locate. The search for this information would be laborious and expensive.” The difficulty of complying with a request does not relate to the availability of the information. See *Industrial Found. v. Texas Industrial Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You did not, however, submit to this office a copy of the written request for information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Gov't Code § 552.302. 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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). You assert that the requested information is excepted from required disclosure pursuant to sections 552.103 and 552.108 of the Government Code. Section 552.103 does not provide a compelling reason sufficient to overcome the presumption that the information is public. *See Open Records Decision No. 551 (1990)* (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation, and does not itself make information confidential). Likewise, the applicability of section 552.108 is generally not a compelling reason which would overcome the presumption that the information must be released. *See Open Records Decision No. 177 at 3 (1977)* (determining that the predecessor to section 552.108 was discretionary exception). We conclude that you have not provided a compelling reason which would overcome the presumption that the information must be released. Therefore, you must release the information 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 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ch

Ref: ID# 133892

cc: Ms. Yolanda Torres
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200 Crescent Court, 11th Floor
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