



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2004

Mr. David K. Walker
County Attorney
Montgomery County
210 West Davis, Suite 400
Conroe, Texas 77301

OR2004-2732

Dear Mr. Walker:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198673.

The Montgomery County Sheriff's Department (the "sheriff") received a request for offense report number 03A035853. You state that you released some of the information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you acknowledge, and we agree, that the sheriff failed to seek an open records decision from this office within the statutory ten business day period. *See* Gov't Code § 552.301(a). The sheriff also failed to submit any of the required items mandated by section 552.301(e) to this office within the statutory fifteen business day period. *See* § 552.301(e). The sheriff's failure to comply with the procedural requirements of the Public Information Act results in the presumption that the requested information is public. In order to overcome this presumption of openness, the sheriff must provide compelling reasons why the information should not be disclosed. *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 claim that section 552.108 of the Government Code excepts the submitted information from disclosure. In this instance, you do not demonstrate a compelling reason to withhold the information under section 552.108. *See, e.g.*, 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 in certain circumstances). Therefore, you may not withhold the submitted information under this exception. You also claim that the submitted information is excepted from disclosure under section 552.111 of the Government Code. However, section 552.111 is a discretionary exception and serves only to protect a governmental body's interests and may be waived. As such, section 552.111 does not generally constitute a compelling reason to withhold information. *See* Open Records Decision Nos. 677 at 10 (2002) (claim of attorney work-product privilege under section 552.111 or Texas Rule of Civil Procedure 192.5 does not provide compelling reason for purposes of section 552.302 if it does not implicate third party rights), 473 (1987) (statutory predecessor to section 552.111 may be waived); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Accordingly, we conclude that you may not withhold the information at issue under section 552.111 of the Government Code. Finally, although you raise section 552.101 of the Government Code, which can provide a compelling reason to withhold information from disclosure, you did not submit any arguments to demonstrate the applicability of this exception to the submitted information. *See* Gov't Code § 552.301 (providing that it is governmental body's burden to explain the applicability of claimed exceptions to disclosure). Further, after review of the submitted information, we find that none of the information is confidential by law or is protected by constitutional or common law privacy as contemplated by section 552.101. Thus, the submitted information cannot be withheld under section 552.101. Accordingly, you must release the submitted 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 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 Texas Building and Procurement Commission 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Melissa Vela-Martinez
Assistant Attorney General
Open Records Division

MVM/sdk

Ref: ID# 198673

Enc. Submitted documents

c: Ms. Diane Coley
P.O. Box 896
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(w/o enclosures)