



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 10, 2008

Mr. Ed J. Cain
Hardin County Sheriff's Office
P.O. Box 1990
Kountze, Texas 77625

Mr. David A. Sheffield
County Attorney
Hardin County
P.O. Box 516
Kountze, Texas 77625

OR2008-12466

Dear Mr. Cain and Mr. Sheffield:

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# 321376.

The Hardin County Sheriff's Office (the "sheriff") and the Hardin County Attorney's Office (the "county attorney") each received a request for all of the documents the sheriff and the county attorney possessed regarding the requestor.¹ The sheriff claims that the requested information is excepted from disclosure under sections 552.101 through 552.148 of the Government Code while the county attorney claims claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exceptions claimed and reviewed the information submitted by the county

¹This office originally assigned identification numbers 321376 and 321430 to these requests for a ruling. These two request have been combined and are being issued as one ruling with the identification number noted above.

attorney.² We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the sheriff's procedural requirements 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 that it wishes to withhold. 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, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). The sheriff received the request at issue on June 27, 2008 and on July 7, 2008 the sheriff submitted to this office a copy of the written request for information. However, as of the date of this letter, the sheriff has failed to provide a copy or representative samples of the specific information requested or written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld. Accordingly, we conclude that the sheriff has failed to comply with section 552.301 of the Government Code.

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. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *see also 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); Open Records Decision No. 319 (1982). 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 (1977). Because the sheriff has failed to comply with the procedural requirements of the Act, the sheriff has waived all of its discretionary exceptions to disclosure. Further, although the sheriff also raises mandatory exceptions to disclosure, the sheriff has not submitted the requested information for our review. Thus we have no basis for finding any of the requested information confidential on behalf of the sheriff. However, the need of a governmental body, other than the agency that is seeking an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason to withhold information from disclosure. *See* Open

²We note that the request to the county attorney includes questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990).

Records Decision No. 586 (1991). As the county attorney asserts a law enforcement interest in the information it submitted, which contains documents created by the sheriff, we will determine whether the sheriff may withhold any information on behalf of the county attorney under section 552.108. We will first determine whether the county attorney may withhold the information it submitted under section 552.108.

Section 552.108 of the Government Code exempts from disclosure "information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime... if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain how and why the release of the information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The county attorney states that the submitted information relates to a pending criminal investigation. Based on this representation and our review, we conclude that section 552.108(a)(1) of the Government Code is applicable in this instance. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curium*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, we note that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; Open Records Decision No. 127 (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the county attorney may withhold the submitted information pursuant to section 552.108(a)(1) of the Government Code. Further, as the county attorney's law enforcement interest provides a compelling reason to withhold information held by the sheriff, to the extent the sheriff holds information that the county attorney has submitted to this office, the sheriff may withhold that information under section 552.108, with the exception of basic information.

In summary, with the exception of basic information, the county attorney may withhold the submitted information under section 552.108(a)(1) of the Government Code. To the extent the sheriff holds information that the county attorney has submitted to this office, the sheriff may withhold that information under section 552.108, with the exception of basic information. The sheriff must release any remaining responsive information in its possession 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). If the governmental body does not file suit over 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 321376

Enc. Submitted documents

c: Mr. and Mrs. Craig W. Spease
15818 Longvale Drive
Houston, Texas 77059-6232
(w/o enclosures)