



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 1, 2010

Sheriff Paul Cunningham  
Montague County Sheriff's Office  
P.O. Box 127  
Montague, Texas 76251

OR2010-01524

Dear Sheriff Cunningham:

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# 368769.

The Montague County Sheriff's Office (the "sheriff") received two requests from the same requestor for a complete copy of the Inmate Code of Conduct, three categories of information related to seven named inmates, all of the commissary records of one named inmate, and records showing when inmates were seen by dentists. You inform us that you have released most of the requested information. You indicate you have no responsive information regarding portions of the request. We note that the Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos.605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990). You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments from the requestor. Gov't Code § 552.304(a) (authorizing person to submit written comments stating reasons why information at issue should or should not be released).

Initially, we note that a portion of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date of both requests. The sheriff need not release non-responsive information in response to these requests, and this ruling will not address the public availability of such information.

Next, we address the requestor's contention that the sheriff failed to comply with the procedural requirements of the Act. Section 552.301(b) requires 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 (b) (emphasis added). Furthermore, section 552.301(e)(1)(D) requires a governmental body to submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or a representative sample of the information, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(D). You state the sheriff received the requests for information on November 4, 2009. However, you did not raise any exceptions to disclosure until January 11, 2010. You submitted some of the requested information on November 17, 2009, but you did not submit the remainder of the information until January 22, 2010. Consequently, we find that the sheriff failed to comply with the requirements of section 552.301 of the Government Code 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 the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, 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. *See* Open Records Decision No. 150 at 2 (1977). Section 552.103 of the Government Code is a discretionary exception to disclosure 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. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions in general). Thus, this section does not constitute a compelling reason to withhold the information for purposes of section 552.302. Therefore, none of the responsive information may be withheld pursuant to section 552.103. However, because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address whether the submitted information must be withheld from public disclosure under this exception.

Section 552.101 exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is considered to be confidential under other law. *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). However, you have failed

to direct our attention to any law, nor are we aware of any law, under which any of the responsive information is considered to be confidential for purposes of section 552.101. Therefore, none of the responsive information may be withheld under section 552.101 of the Government Code. As you raise no further exceptions to disclosure, the responsive information must be released to the requestor.

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](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,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/dls

Ref: ID# 368769

Enc. Submitted documents

c: Requestor  
(w/o enclosures)