



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 3, 2010

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2010-03127

Dear Mr. Walker:

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# 371569.

The Montgomery County Sheriff's Department (the "sheriff") received a request for a specified incident report. You state the sheriff will release certain information. You claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the sheriff's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(a), (b). You state the sheriff received the request for information on December 3, 2009. Accordingly, you were required to request a decision from this office by

¹Although you also raise section 552.101 of the Government Code, you have not submitted any arguments under this exception. Consequently, we do not address it. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must submit written comments explaining why stated exceptions apply no later than 15 days after receipt of written request).

December 17, 2009. We note the envelope in which the sheriff's request for a ruling was submitted bears a postmark date of December 23, 2009. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). However, this office received the sheriff's request for ruling on December 21, 2009. We note both December 21, 2009, and December 23, 2009, are past the sheriff's ten-business-day deadline. Further, you have not provided this office with satisfactory proof the sheriff requested a ruling from this office within the ten-business-day deadline. *See id.* § 552.308(a)(2). Consequently, we determine the sheriff failed to comply with the procedural requirements mandated by 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 requested information is public and must be released unless the governmental body demonstrates a compelling reason 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason exists when third-party interests are at stake or when information is confidential under other law. *See* Open Records Decision Nos. 630 at 3 (1994), 150 (1977). You claim an exception to disclosure under section 552.108 of the Government Code; however, section 552.108 is a discretionary exception that may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). However, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason that overcomes the presumption of openness under section 552.302. *See* ORD 586 at 2-3. You have submitted an affidavit from an assistant district attorney for Montgomery County (the "district attorney") objecting to the release of the submitted information; therefore, we will consider whether the submitted information is excepted under section 552.108.

Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested 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 district attorney asserts that release of the submitted information would hamper the pending prosecution of the offense at issue. Based on this representation, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime.

As you acknowledge, section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered basic information). Thus, with the exception of basic information, which you state will be released, the sheriff may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/cc

Ref: ID# 371569

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²We note that the basic information contains the arrestee's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147.