



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 24, 2010

Mr. Randall Miller  
Assistant Criminal District Attorney  
Navarro County Criminal District Attorney's Office  
300 West 3rd Avenue, Suite 203  
Corsicana, Texas 75110

OR2010-07463

Dear Mr. Miller:

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# 380347.

The Navarro County Sheriff's Office (the "sheriff") received a request for the police report and probable cause affidavit related to a specified case. You state the probable cause affidavit does not exist in the sheriff's records.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state "the [sheriff] is investigating the identity of [the requestor] in connection with this case." We note, however, the identity of the requestor is generally not a factor to be considered when a governmental body receives a request for information. *See* Gov't Code § 552.223 (requiring uniform treatment of all requests for information). Further, the requestor states he is making the request for information pursuant to the Act. This office has determined the Act does not permit the consideration by a governmental body or this office of a requestor's intended use of information when responding to open records requests. *See id.* § 552.222(a) (stating governmental body may not inquire into purpose for which

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<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

information will be used); *see also* Open Records Decision Nos. 508 (1988) at 2 (motives of a person seeking information under the Act are irrelevant), 51 (1974). Therefore, the sheriff may only withhold the submitted information if it is excepted from disclosure under the Act or made confidential by law.

Next, we must address the sheriff's obligations under the Act. Section 552.301 of the Government Code 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(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 state 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), (2). You state, and the submitted information indicates, the sheriff received the request for information on March 9, 2010. Thus, the sheriff's fifteen-business-day deadline was March 30, 2010. However, you did not submit a copy or representative sample of the specific information requested until April 8, 2010. Accordingly, we conclude the sheriff failed to comply with the procedural requirements of section 552.301(e).

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 requested information is public and must be released. 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 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 governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Although you raise sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions 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. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, none of the submitted information may be withheld pursuant to those exceptions. However, we note portions of the submitted

information are subject to section 552.130 of the Government Code.<sup>2</sup> Because section 552.130 can provide a compelling reason to overcome the presumption of openness, we will address the applicability of this exception to the submitted information.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130. Accordingly, the sheriff must withhold the Texas driver's license information we have marked pursuant to section 552.130 of the Government Code.<sup>3</sup> As no further exception to disclosure has been raised, the remaining information must be released to the requestor.<sup>4</sup>

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,



Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/rl

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>4</sup>We note the remaining information contains social security numbers. 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 under the Act.

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)