



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2010

Ms. Elizabeth Lutton
Legal Advisor
Dallas County Sheriff's Department
133 Riverfront, LB-31
Dallas, Texas 75207-4313

OR2010-08718

Dear Ms. Lutton:

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# 382637.

The Dallas County Sheriff's Department (the "sheriff") received a request for all documents, files, records, notes, police logs, and jail detention records pertaining to a named inmate who died in custody. You claim the submitted records are excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We must address the sheriff's obligations 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 it wishes to withhold. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Gov't Code § 552.301(b). The request is dated March 2, 2010. You have attached to the request a copy of a document showing the sheriff communicated with the requestor concerning the request. This document is dated March 9, 2010. You state, however, the sheriff's legal advisor did not receive the request until March 25, 2010. The Act's deadlines are triggered by the receipt of a written request by the governmental body, not by the actual receipt of the request by the specific person whose responsibility it is to respond to the request. *See id.* You have not explained the discrepancy in the dates. Because you

submitted documentation indicating the request was received on or before March 9, 2010, we find the sheriff failed to comply with the requirements of section 552.301 when it requested a ruling from this office on April 7, 2010.

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 that the information is public and must be released unless a compelling reason exists 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). 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). Although you raise section 552.103 of the Government Code, this exception is discretionary in nature. It serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general). Consequently, the sheriff may not withhold the submitted information pursuant to section 552.103 of the Government Code. As you raise no further exceptions to disclosure, the submitted information must be released.

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 382637

Enc. Submitted documents

c: Requestor
(w/o enclosures)