



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 1, 2010

Deputy Danie Huffman  
Parker County Sheriff's Office  
129 Hogle Street  
Weatherford, Texas 76086

OR2010-09755

Dear Deputy Huffman:

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# 384978.

The Parker County Sheriff's Office (the "sheriff") received a request for information pertaining to a specified incident. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.151 of the Government Code. We have considered the exceptions 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 a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e-1) provides the following:

A governmental body that submits written comments to the attorney general under Subsection (e)(1)(A) shall send a copy of those comments to the person who requested the information from the governmental body not later than the 15<sup>th</sup> business day after the date of receiving the written request. If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the person must be a redacted copy.

See Gov't Code § 552.301(e-1). We note you have provided our office with a copy of the written comments you provided to the requestor pursuant to section 552.301(e)(1)(A). Upon

review, we note the sheriff failed to include its discussion of one of the claimed exceptions in these comments, including information that does not disclose or contain the substance of the information requested. Further, we note the sheriff failed to raise section 552.151 of the Government Code as an exception to disclosure within the statutory time period prescribed by section 552.301(b) of the Government Code. *See* Gov't Code § 552.301(b). Thus, we conclude the sheriff failed to comply with the procedural requirements of 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 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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision Nos. 319 (1982), 586 (1991), 630 (1994). This office has held a compelling reason exists to withhold information when third party interests are at stake or when information is made confidential by another source of law. *See* Open Records Decision No. 150 (1977) (construing predecessor statute). Although the sheriff claims an exception to disclosure under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 177 (1977) (governmental body may waive statutory predecessor to section 552.108), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Because the sheriff failed to comply with the procedural requirements of the Act, the sheriff has waived its claim under section 552.108. 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 Records Decision No. 586 at 3 (1991); Open Records Decision Nos. 469 (1987) (university may withhold information under Gov't Code § 552.103 predecessor to protect district attorney's interest in anticipated criminal litigation). Because you inform us, and we have received a statement showing, the Parker County District Attorney's Office (the "district attorney") objects to release of the information at issue under section 552.108 of the Government Code, we will consider whether the sheriff may withhold the submitted information under section 552.108 on behalf of the district attorney. The sheriff also raises section 552.151 of the Government Code for portions of the submitted information. Because section 552.151 can provide a compelling reason to overcome the presumption of openness in section 552.302, we will also address the applicability of this section to the submitted information.

Section 552.108(a)(1) of the Government Code 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). You inform us, and we have received a letter from the district attorney stating, the submitted information pertains to an ongoing criminal investigation and prosecution. Further, in the letter submitted to this office, the district attorney objects to release of the submitted information because its release would interfere with this investigation and prosecution. Based on these representations, we conclude release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is generally applicable to the submitted information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, and includes the identity of the arresting officer. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the sheriff may withhold the submitted information from disclosure under section 552.108(a)(1) on behalf of the district attorney.

We understand you to assert that some of the basic information must be withheld under section 552.151 of the Government Code. Section 552.151 provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov’t Code § 552.151. You state the arresting officer listed in the submitted information is an undercover police officer. You represent that release of this officer’s identity would cause the undercover officer to face a “substantial threat of physical harm” and “compromise [the officer’s] welfare and safety.” Based on your representations, we conclude you have demonstrated that release of the identity of the undercover officer would subject the officer to a substantial threat of physical harm. Therefore, we conclude the sheriff must withhold the identity of the undercover officer in the basic information under section 552.151 of the Government Code.

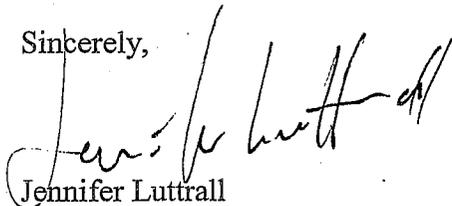
In summary, with the exception of basic information, the sheriff may withhold the submitted information from disclosure under section 552.108(a)(1) of the Government Code on behalf

of the district attorney. In releasing basic information, the sheriff must withhold the identity of the undercover officer pursuant to section 552.151 of the Government Code. The remaining basic 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](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 384978

Enc. Submitted documents

c: Requestor  
(w/o enclosures)