



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 1, 2010

Mr. Daniel Bradford
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2010-13316

Dear Mr. Bradford:

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# 392424.

The Travis County Sheriff's Office (the "sheriff") received two requests from the same requestor for any surveillance video recordings, 9-1-1 calls, or dashcam recordings related to a specified incident. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

We note, and you acknowledge, that the sheriff failed to meet the ten and fifteen-business-day deadlines prescribed by section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental

¹Although you also raise section 552.101 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume you no longer assert section 552.101 as an exception to disclosure. *See* Gov't Code §§ 552.301, .302.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public. 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); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; 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). Accordingly, by failing to comply with section 552.301, the sheriff has waived its claim under section 552.108. However, the need of a governmental body, other than the one that failed to timely seek an open records decision, to withhold information under section 552.108 can provide a compelling reason under section 552.302. Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). Because you inform us that the Travis County District Attorney's Office (the "district attorney") objects to the release of the requested information, we will consider whether the sheriff may withhold the information at issue on behalf of the district attorney under section 552.108 of the Government Code.

Section 552.108 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the district attorney objects to the release of the information at issue because it relates to a pending prosecution by the district attorney and that release of the information at issue would interfere with the pending prosecution. Based on your representations, we conclude that the sheriff may withhold the submitted information on behalf of the district attorney under section 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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,

A handwritten signature in cursive script that reads "Jonathan Miles".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 392424

Enc. Submitted documents

c: Requestor
(w/o enclosures)