



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2010

Mr. Michael M. Kelly
Assistant Criminal District Attorney
Victoria County
205 North Bridge Street, Suite 301
Victoria, Texas 77901

OR2010-15983

Dear Mr. Kelly:

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# 397980.

The Victoria County Sheriff's Office (the "sheriff") received a request for information pertaining to a specified type of incident that occurred on a specified date. You state you have released the submitted information to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101 through 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld and copies or representative samples of the information requested within fifteen business days of receiving an open records request. Gov't Code § 552.301(e)(1)(A)-(B). As of this date, you have not submitted to this office written comments stating the reasons your claimed exceptions apply or a copy of the information you seek to withhold. Accordingly, we conclude the sheriff failed to comply with the procedural requirements of section 552.301.

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 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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). 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* Open Records Decision No. 630 (1994). Because the sheriff has failed to comply with the procedural requirements of the Act, the sheriff has waived all of its discretionary exceptions to disclosure. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Although the sheriff also raises mandatory exceptions to disclosure, because you have not submitted the information you seek to withhold for our review, we have no basis for finding any of the information excepted from disclosure or confidential by law. We therefore conclude that the sheriff must release the remaining requested information to the requestor pursuant to section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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,



James McGuire
Assistant Attorney General
Open Records Division

JM/dls

Ref: ID# 397980

Enc. Submitted documents

c: Requestor
(w/o enclosures)