



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 13, 2011

Sheriff Don Copeland  
County Sheriff  
Gray County Sheriff's Office  
218 North Russell  
Pampa, Texas 79065

OR2011-13173

Dear Sheriff Copeland:

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# 429629.

The Gray County Sheriff's Office (the "sheriff") received a request for all information pertaining to a specified arrest of a named individual. You claim the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim.

We must address the sheriff's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures 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 claimed 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

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<sup>1</sup> Although you cite to section 552.102 of the Government Code in your brief, we understand you to raise section 552.103 based on the substance of your argument.

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)(A)-(D). The sheriff received the request for information on July 6, 2011. As of this date, you have not submitted to this office a copy or representative sample of the information requested. Accordingly, we conclude the sheriff failed to comply with the 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 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. You assert the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. Sections 552.103 and 552.108 are discretionary exceptions to disclosure and may be waived. *See* Gov't Code § 552.007; *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 Gov't Code § 552.103); 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) (untimely request for decision resulted in waiver of discretionary exceptions). In failing to comply with the requirements of section 552.301 of the Government Code, you have waived the sheriff's claims under sections 552.103 and 552.108. Accordingly, the sheriff may not withhold the requested information under section 552.103 or section 552.108. Thus, we have no choice but to order the requested information released pursuant to section 552.302. 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](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 black ink that reads "Claire Morris Sloan". The signature is written in a cursive style with a large initial "C" and a decorative flourish at the end.

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/agn

Ref: ID# 429629

c: Requestor