



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2011

Sheriff Sigifredo González, Jr.
Zapata County
2311 Stop 23A
Zapata, Texas 78076

OR2011-13229

Dear Sheriff González:

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# 429871.

The Zapata County Sheriff's Office (the "sheriff") received two separate requests from the same requestor. The first request is for (1) the audio recording and transcript of a specified 9-1-1 call involving a named individual and (2) all records during a specified time period regarding the named individual.¹ The second request seeks all records, including 9-1-1 calls and information pertaining to victims and witnesses, during a specified time period regarding specified types of incidents that occurred on Falcon Lake. You state the sheriff has provided some of the requested information to the requestor. You indicate portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code.² We have considered your arguments and reviewed the submitted information.

Initially, 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

¹Although you did not submit a copy of this request to our office, we take our description from a copy of the request provided to us by the requestor.

²Although you do not explicitly claim section 552.101, we understand you to raise that exception to disclosure based on the substance of your arguments.

section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated 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 specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this instance, although you have not informed us when the sheriff received the requests for information, the submitted information and information provided by the requestor reflect the sheriff received the first request for information in April 2011 and the second request for information in May 2011. You did not, however, request rulings from this office until July 11, 2011. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Furthermore, you have not submitted a copy of the first written request for information. Thus, we find 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 comply with the requirements of section 552.301 results in the legal presumption the requested 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, 381-82 (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 No. 630 (1994). Generally, 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. Open Records Decision No. 150 at 2 (1977). You assert some of the submitted information is excepted under section 552.101 of the Government Code. Furthermore, we note some of the information may be excepted under section 552.130 of the Government Code.³ Because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Code § 552.101. You seek to withhold the identities of certain complainants, victims, and witnesses in the submitted incident reports and related records because release of their identities would put their lives at risk. Thus, we understand you to claim the information at issue is excepted from required disclosure under section 552.101 in conjunction with the common-law physical safety exception.

The Texas Supreme Court recently recognized, for the first time, a separate common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 54 Tex. Sup. Ct. J. 1428, 2011 WL 2586861 at *5 (Tex. July 1, 2011) (holding “freedom from physical harm is an independent interest protected under law, untethered to the right of privacy”). Pursuant to this common-law physical safety exception, “information may be withheld [from public release] if disclosure would create a substantial threat of physical harm.” *Id.* In applying this new standard, the court noted “deference must be afforded” law enforcement experts regarding the probability of harm, but further cautioned “vague assertions of risk will not carry the day.” *Id.* at *6.

You indicate release of the identities of the complainants, victims, and witnesses at issue in the submitted information would create a substantial threat of physical harm to those individuals. You explain the sheriff has received corroborated information that “Mexican drug cartel organizations . . . wish to eliminate all witnesses to any and all incidents that have occurred in Falcon Lake.” Based on your representations and our review, we find you have established disclosure of the complainants’, victims’, and witnesses’ identifying information would create a substantial threat of physical harm to these individuals. Accordingly, the sheriff must withhold the information you have highlighted, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

The remaining information contains motor vehicle record information, which we have marked. Section 552.130 of the Government Code provides information relating to a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov’t Code § 552.130(a)(2)). Therefore, the sheriff must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the sheriff must withhold the information you have highlighted, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. The sheriff must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The sheriff must release the remaining information to the requestor.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 429871

Enc. Submitted documents

c: Requestor
(w/o enclosures)