



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 21, 2011

Ms. Katie Lentz  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2011-17173

Dear Ms. Lentz:

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# 436697.

The Williamson County Sheriff's Office (the "sheriff") received two requests from the same requestor for (1) documents relating to the third paragraph of Open Records Letter Ruling No. 2011-11628 (2011) dated after May 25, 2011, and (2) the incident report concerning a named individual and the requestor's camera. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we address the requestor's assertion the sheriff failed to comply with the procedural requirements of section 552.301(d) of the Government Code. Pursuant to section 552.301(d), the governmental body must provide the requestor, within ten business days after the date of its receipt of the request for information, a statement the governmental body has asked for a decision from the attorney general and a copy of the governmental body's written communication to the attorney general asking for a decision. *See* Gov't Code § 552.301(d). Although you state the sheriff received the present requests for information on August 31, 2011, we note the submitted requests for information show the requestor e-mailed his requests to the sheriff's officer of public information on August 30, 2011. *See id.* § 552.301(c) (stating that a written request includes a request in writing that is sent to the

officer for public information, or the person designated by that officer, by e-mail or facsimile). Therefore, we conclude the sheriff received the request for information on August 30, 2011.<sup>1</sup> Thus, the sheriff's ten business day deadline under subsection 552.301(d) is September 14, 2011. In this instance, the requestor has submitted to our office a copy of the envelope in which the sheriff's written comments were provided to him, which is postmarked September 15, 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). As such, we find the sheriff has failed to comply with the requirements mandated by subsection 552.301(d).

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 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 No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Section 552.108 of the Government Code is a discretionary exception to disclosure that a governmental body may waive. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5(1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). However, the law enforcement interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). Because you inform us the Williamson County District Attorney's Office (the "district attorney") asserts a law enforcement interest in the submitted information, we will consider the district attorney's arguments under section 552.108 for the submitted information. Further, because sections 552.101 and 552.117 of the Government Code can provide compelling reasons to overcome the presumption that arises under section 552.302, we will also consider the applicability of these exceptions 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 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 the district attorney asserts the submitted information relates to a pending criminal prosecution and requests the information not be released. Based on this representation and

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<sup>1</sup>This office does not count the day the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act.

our review, we determine release of the submitted information would interfere with the detection, investigation, or prosecution of crime, and agree section 552.108(a)(1) is applicable. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108, however, does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the sheriff may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney.<sup>2</sup>

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,



Kirsten Brew  
Assistant Attorney General  
Open Records Division

KB/em

Ref: ID# 436697

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.