



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 29, 2011

Mr. Richard R. Gore
Assistant Criminal District Attorney
County of Randall
2309 Russell Long Boulevard, Suite 120
Canyon, Texas 79015

OR2011-19168

Dear Mr. Gore:

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# 440874.

The County of Randall (the "county") received a request for the following information about all employees of the county's sheriff's office (the "sheriff"): name, title, department, race and gender, hire date, annual salary at hire date, current annual salary, and whether the employee is full or part-time. You state that the county has released some of the requested information. You claim that portions of the requested information are excepted from disclosure under sections 552.108 and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you have provided a copy of the information you have released to the requestor. We note, however, that this information does not include the requested information pertaining to race or salary at the time of hire date of any of the sheriff's employees. Thus, to the extent such information existed and was maintained by the county on the date the county received the request for information, we presume the county has released it. If not, the county must do so at this time. *See Gov't Code §§ 552.301, .302; see also id. § 552.022(a)(2)* (name, sex, ethnicity, salary, title, and dates of employment of each employee of a governmental body are public information); Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

Next, must address the county's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See* Gov't Code § 552.301(e)(1)(A)-(D). You state the county received the request for information on October 6, 2011. Therefore, the county's fifteen-business-day deadline was October 27, 2011. However, you did not submit to this office the specific information you seek to withhold until December 14, 2011. Thus, the county failed to comply with the requirements mandated by subsection 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body overcomes this presumption by demonstrating a compelling reason to withhold the information. *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); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Although you raise section 552.108 of the Government Code, this section 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. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to comply with section 552.301, the county has waived its argument under section 552.108, and may not withhold the information at issue on that basis. However, because section 552.152 can provide a compelling reason to withhold information, we will consider the applicability of this exception to the information at issue.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You inform us the information at issue relates to two undercover sheriff's deputies. You contend release of this information would subject these undercover deputies to a substantial threat of physical harm and state disclosure of their identities would "expose them to great danger." Based on your representation, we agree the county must withhold the information at issue under section 552.152 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 440874

Enc. Submitted documents

c: Requestor
(w/o enclosures)