



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 6, 2012

Mr. Robert Busselman
County Attorney
Karnes County
101 North Panna Maria, Suite 10
Karnes City, Texas 78118

OR2012-00303

Dear Mr. Busselman:

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# 441657.

The Karnes County Sheriff's Office (the "sheriff") received a request for four categories of information pertaining to a specified incident in which an officer discharged his firearm. You "request that [the sheriff] not be required to furnish" the requested information.

We must address the sheriff's responsibilities 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 required public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Additionally, under section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request general written comments explaining the reasons the claimed exceptions would allow the information to be withheld, and a copy of the specific information requested or a representative sample. Although you generally ask that the sheriff not be required to release the requested information, as of the date of this letter you have not asserted any specific exceptions to disclosure or explained why any specific exception applies. Further, you have not submitted a copy of the information requested or a representative sample. Accordingly, we conclude the sheriff has

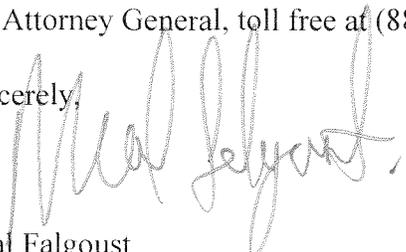
failed to comply with the procedural requirements of section 552.301 of the Government Code.

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. 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) (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 exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because you have failed to comply with the requirements of section 552.301, you have waived any discretionary exceptions under the Act. *See* Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Furthermore, because you have not submitted a copy or representative sample of the information at issue for our review, we have no basis for finding any of the requested information confidential by law. Therefore, we must order the sheriff to release the requested information pursuant to section 552.302 of the Government Code. If you believe this 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/agn

Ref: ID# 441657

Enc. Submitted documents

c: Requestor
(w/o enclosures)