



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2012

Mr. Michael M. Kelly
Assistant Criminal District Attorney
Victoria County
205 North Bridge Street, Suite 301
Victoria, Texas 77901

OR2012-03246

Dear Mr. Kelly:

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# 447134.

The Victoria County Sheriff's Office (the "sheriff") received a request for a specified police report and any video or sound recordings pertaining to that arrest. You state you are releasing a copy of the arrest report.¹ You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

Initially, we must address the sheriff's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this

¹We note, however, you have redacted certain information in the arrest report under sections 552.130 and 552.147 of the Government Code. Because sections 552.130 and 552.147 protect personal privacy, the requestor has a right of access to her own driver's license and social security number under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the requestor's driver's license and social security numbers may not be withheld in this instance under sections 552.130 and 552.147.

²We assume the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). You state, and the submitted information reflects, the sheriff received the present request for information on December 2, 2011. Thus, the sheriff's ten-business-day deadline under section 552.301(b) was December 16, 2011. However, you did not request a ruling from this office or provide the information required under section 552.301(e) until December 21, 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). Although you assert that you mailed a letter requesting a decision from this office on December 7, 2011, and you provided a copy of a letter dated December 7, 2011 to this office as part of your December 21, 2011 correspondence, we have no record of having otherwise received the December 7, 2011 letter. Thus, we conclude the sheriff failed to comply with the procedural requirements mandated by section 552.301.

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 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 (Tex. App.—Austin 1990, no writ); *see also* 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). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests. *See* Open Records Decision Nos. 665 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). *But see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). Thus, the sheriff's claim under section 552.108 is not a compelling reason to overcome the presumption of openness. Therefore, the sheriff may not withhold any of the submitted information under section 552.108. However, section 552.130 of the Government Code can provide a compelling reason to overcome this presumption.³ Therefore, we will consider whether this section requires you to withhold any of the submitted information.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov't Code § 552.130(a)(1)-(2). Upon review, we find the sheriff must withhold the motor vehicle

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

record information we have marked under section 552.130 of the Government Code. As you raise no further exceptions, the remaining information must be released.⁴

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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/dls

Ref: ID# 447134

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the requestor has a right of access to some of the information being released. Therefore, if the sheriff receives another request for the same information from a different requestor, it must again seek a ruling from this office.