



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 11, 2012

Mr. William Schultz  
Assistant District Attorney  
Civil Division  
Denton County Criminal District Attorney's Office  
P.O. Box 2850  
Denton, Texas 76202

OR2012-14409

Dear Mr. Schultz:

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# 469052.

The Denton County Criminal District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified case.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the district attorney's office's obligations under the Act. Pursuant to 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 (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,

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<sup>1</sup>We note the district attorney's office asked for and received clarification regarding this request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

labeled to indicate which exceptions apply to which parts of the documents. See Gov't Code § 552.301(e). Although you timely raised sections 552.103, 552.107, and 552.111 you have not submitted to this office comments explaining why these exceptions apply to the submitted information. 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). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the information is confidential by law or third-party interests are at stake. See Open Records Decision Nos. 630 at 3, 325 at 2 (1982).

Sections 552.103, 552.107, and 552.111 are discretionary in nature and serve only to protect a governmental body's interests; as such, they may be waived. By failing to submit arguments for these exceptions, we find that you have waived your claims under sections 552.103, 552.107, and 552.111. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 676 at 12 (2002) (attorney-client privilege under section 552.107 constitutes compelling reason to withhold information under section 552.302 only if release would harm third party), 665 at 2 n.5 (2000) (untimely request for decision results in waiver of discretionary exceptions), 663 at 5 (1999) (governmental body may waive section 552.111), 470 (1987) (statutory predecessor to section 552.111 is discretionary exception). Section 552.101 of the Government Code can provide compelling reasons to overcome this presumption; therefore, we will consider your arguments under section 552.101 for the information at issue. We will also consider the applicability of your timely-raised exception for the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state the submitted information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front-page

offense and arrest information, the district attorney's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.<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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/tch

Ref: ID# 469052

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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