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Mr. Michael Shaunessy
Counsel for Llano County Sheriff's Office
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OR2012-17242

Dear Mr. Shaunessy:

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# 469182.

The Llano County Sheriff's Office (the "sheriff's office"), which you represent, received a request for information pertaining to a named individual, policies and procedures concerning inmate mental and medical healthcare, and documents relating to federal funds received by the sheriff's office. You claim the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the claimed exception.

Initially, you state some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2011-18724 (2011). In that ruling, this office determined the sheriff's office must release the magistrate warnings and court-filed documents pursuant to section 552.022(a)(17) of the Government Code. We further determined the requestor in that instance had a right of access to some of the remaining information pursuant to subsections (a)(1)(A) and (a)(4)(B) of section 10805 of title 42 the United States Code and section 15043 of title 42 the United States Code. As to the information to which the requestor did not have a right of access, we ruled the sheriff's office must withhold (1) the FBI numbers and CHRI we marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code; (2) the marked identifying information for people with whom the inmate corresponded and inmate visitor information under section 552.101 in conjunction with constitutional privacy; (3) the

marked medical records pursuant to section 552.101 of the Government Code in conjunction with the MPA, unless the sheriff's office received written consent for release of those records that complies with sections 159.004 and 159.005 of the Occupations Code; and (4) the bank account and routing numbers we marked under section 552.136 of the Government Code. We ordered the remaining information be released to the requestor. As to the information to which the previous requestor did not have a right of access, we have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Thus, the sheriff's office must continue to rely on Open Records Letter No. 2011-18724 as a previous determination and must withhold or release the information to which the previous requestor did not have a right of access in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, the current request involves a different requestor with no special right of access to the information. Thus, we find that the circumstances have changed, and the department may not rely on Open Records Letter No. 2011-18724 as a previous determination in this instance with respect to the information to which the previous requestor had a right of access. *See* ORD 673. Accordingly, we will consider whether the remaining requested information is confidential under the Act.

We must address the sheriff's office's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), within fifteen business days of receipt of the request the governmental body must submit to this office, among other items, a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). In this instance, you state the sheriff's office received the request for information on August 9, 2012. However, as of the date of this ruling, you have not submitted a copy of the information requested, or representative samples, to this office. Consequently, we find the sheriff's office failed to comply with section 552.301 of the Government Code with respect to the information that is not subject to Open Records Letter No. 2011-18724.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless the governmental body overcomes the presumption by demonstrating a compelling reason to withhold the information. *See* Gov't Code § 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); *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). Although you raise section 552.103 of the Government Code, this is a discretionary exception to disclosure that protects only a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 473 (1987) (section 552.103 may be waived). As such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. As you raise no additional exceptions to disclosure, you must release the responsive information that is not subject to Open Records Letter No. 2011-18724.

In summary, the sheriff's office must withhold or release the information to which the previous requestor did not have a right of access in accordance with Open Records Letter No. 2011-18724. The remaining requested information must be released.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 469182

c: Requestor