



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 14, 2013

Mr. Mark Kennedy
Assistant District Attorney
Hays County District Attorney's Office
712 South Stagecoach Trail, Suite 2057
San Marcos, Texas 78666

OR2013-04289

Dear Mr. Kennedy:

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# 481362.

The Hays County Sheriff's Office (the "sheriff's office") received a request for ten categories of information. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.

Initially, we note you have not submitted information responsive to categories five, seven, and eight of the request. Although you state the sheriff's office submitted a representative sample of information, we find the submitted information is not representative of these types of information. Please be advised this open records letter applies only to the type of information you have submitted for our review. Therefore, this letter ruling does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information is presumed to be public). Thus, to the extent any information responsive to these portions of the request existed when the present request was received, we assume it has been released.¹ If such information has not been released, then it must be released at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986).

No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the submitted information consists of a completed investigation. Section 552.022 provides “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body” is expressly public, unless it is excepted by section 552.108 of the Government Code or made confidential under the Act or other law. Gov’t Code § 552.022(a)(1). Although you claim section 552.103 of the Government Code for this information, that is a discretionary exception to disclosure, does not make information confidential under the Act. *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 No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body’s position in litigation and does not itself make information confidential); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the sheriff’s office may not withhold the submitted information under section 552.103 of the Government Code. However, we note some of the submitted information is subject to section 552.136 of the Government Code.² As this exception makes information confidential under the Act, we will consider its applicability to the submitted information.

Section 552.136 of Government Code states “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. Upon review, we find the sheriff’s office must withhold the bank account and routing number we have marked under section 552.136. As no further exceptions to disclosure have been raised, the remaining information must be released.³

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

²The 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).

³We note the requestor has a special right of access to the information being released. *See* Gov’t Code §§ 552.023, .137(b). Accordingly, if the sheriff’s office receives another request for this information from a different requestor, then the sheriff’s office should again seek a decision from this office. *See* Gov’t Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

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,

A handwritten signature in black ink, appearing to read 'NK' followed by a large, stylized flourish.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 481362

Enc. Submitted documents

c: Requestor
(w/o enclosures)