



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2013

Mr. Stan O. Springerley
Civil Assistant District Attorney
Smith County Criminal District Attorney's Office
100 North Broadway, 4th Floor
Tyler, Texas 75702

OR2013-17872

Dear Mr. Springerley:

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# 502380.

The Smith County Sheriff's Office (the "sheriff's office") received a request for a specified search warrant and any information related to two specified entities, a specified city, and a named individual, and two additional requests from different requestors for information related to a specified search warrant. You state the sheriff's office has no information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.103 and 522.108 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted for our review information related to the individual named in one of the requests. To the extent any such information existed and was

¹We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

²Although you also raise sections 552.102, 552.117, 552.1175, and 552.119 of the Government Code, you have not submitted arguments explaining how these exceptions apply to the submitted information. Therefore, we presume the sheriff's office no longer asserts any of these exceptions. See Gov't Code §§ 552.301, .302.

maintained by the sheriff's office on the date the sheriff's office received the request, we assume you have released it to the individual who requested it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Next, we note the submitted information consists of a search warrant and an order sealing the search warrant affidavit that are subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. *Id.* § 552.022(a)(17). Although the sheriff's office seeks to withhold this information under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure and do 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 Nos. 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the sheriff's office may not withhold the search warrant and the order sealing the search warrant affidavit under section 552.103 or section 552.108. As you raise no further exceptions to disclosure of this information, the sheriff's office must release the submitted information pursuant to section 552.022(a)(17).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 502380

Enc. Submitted documents

c: Three Requestors
(w/o enclosures)