



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2014

Mr. Edmund J. Zielinski
County Attorney
Cooke County
101 South Dixon Street
Gainesville, Texas 76240

OR2014-19119

Dear Mr. Zielinski:

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# 545321.

Cooke County (the "county") received a request for basic information related to a specified burglary. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim.

Initially, we must address the county'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), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) 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, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). In this instance, the county states it received the request for information on September 16, 2014. As of the date of this letter, the county has not submitted for our review written comments stating the reasons why the stated exception applies or a copy or representative sample of the information requested.

Consequently, we find the county failed to comply with section 552.301 of the Government Code.

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 the requested information is public and must be released unless a compelling reason exists 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, 381-82 (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). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). You assert the requested information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 is a discretionary exception to disclosure and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 177 (1977) (governmental body may waive statutory predecessor to section 552.108), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). We note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime.¹ Gov't Code § 552.108(c). In failing to comply with the requirements of section 552.301, you have waived the county's claim under section 552.108. Accordingly, the county may not withhold the requested information under section 552.108. Thus, we have no choice but to order the requested information released pursuant to section 552.302. If the county believes the information is confidential and may not lawfully be released, it must challenge this ruling in court pursuant to section 552.324 of the Government Code.

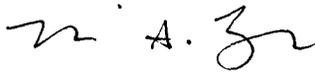
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). We note basic information does not include information related to a suspect who was not arrested. *See* Open Records Decision No. 127 at 3-4 (1976).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "N. A. Ybarra". The signature is fluid and cursive, with the first letter of each name being capitalized and larger than the others.

Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bhf

Ref: ID# 545321

Enc. Submitted documents

c: Requestor