



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 22, 2016

Ms. Laura M. Carpenter  
Assistant District Attorney  
Harrison County  
P.O. Box 776  
Marshall, Texas 75670

OR2016-01680

Dear Ms. Carpenter:

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# 594913.

The Harrison County Criminal District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified incident. You claim the requested information is exempted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim.

We must address the district attorney'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), 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). The district attorney's office received the request for information on October 21, 2015. However, as of the date of this letter, the district attorney's office has not submitted for our review written comments stating the reasons why the stated exceptions apply or a copy or representative sample of the information requested. Consequently, we find the district attorney's office 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). Because the district attorney's office has failed to comply with the procedural requirements of the Act, it has waived its claim under section 552.108 of the Government Code. *See Simmons*, 166 S.W.3d at 350 (section 552.108 is not compelling reason to withhold information under section 552.302); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Although the district attorney's office also raises section 552.101 of the Government Code, which can provide a compelling reason for non-disclosure, because the district attorney's office has not submitted the requested information for our review, we have no basis for finding any of the information is excepted from disclosure under section 552.101. Thus, we have no choice but to order the district to release the requested information pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you 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](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,



Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/akg

Ref: ID# 594913

c: Requestor