



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 11, 2016

Ms. Karen Cooper MacLeod
County Auditor
Kaufman County
100 North Washington
Kaufman, Texas 75142

OR2016-05694

Dear Ms. MacLeod:

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# 601296.

The Office of the Kaufman County Auditor (the "auditor's office") received a request for 1) the budget for Kaufman County, 2) specified information pertaining to seized vehicles and monies, and 3) specified information pertaining to a named employee. You state you have released most of the requested information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.152 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the auditor's office's procedural obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In this instance, you state, and submit documentation demonstrating, the auditor's office received the request for information on

¹Although you do not raise section 552.152 of the Government Code in your brief, we understand you to assert this exception based on your arguments.

December 10, 2015. We note the auditor's office was closed on December 24, 2015, and December 25, 2015. This office does not count the date the request was received or holidays the governmental body was closed for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the auditor's office's ten-business-day deadline was December 28, 2015. However, you did not request a ruling from this office until December 30, 2015. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the auditor's office failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of 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). Although you raise section 552.108 of the Government Code for the submitted information, this section is discretionary in nature. It serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information. *See* 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). Thus, the sheriff's office has waived its claim under section 552.108 for the submitted information. However, because section 552.152 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted information.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

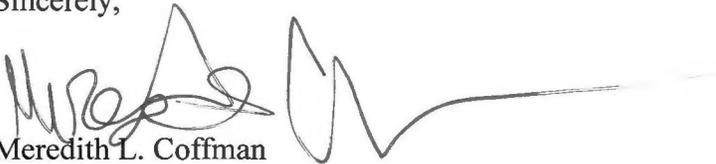
Gov't Code § 552.152. You inform us some of the submitted information pertains to vehicles that may be used in undercover law enforcement operations. As we are unable to determine which of these vehicles are used in undercover operations, we must rule conditionally. To the extent the information we have indicated pertains to vehicles used in

undercover operations, the auditor's office must withhold this information under section 552.152 of the Government Code. If the vehicles at issue are not used in undercover operations, the auditor's office may not withhold this information under section 552.152 of the Government Code. The auditor's office must release the remaining information.

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,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 601296

Enc. Submitted documents

c: Requestor
(w/o enclosures)