



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 20, 2016

Ms. Yvonne Barbour  
Communications Supervisor  
Custodian of Records  
Kleberg County Sheriff's Office  
P.O. Box 1360  
Kingsville, Texas 78363

OR2016-16374

Dear Ms. Barbour:

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# 619301.

The Kleberg County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specific motor vehicle accident.<sup>1</sup> The sheriff's office claims the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the sheriff's office claims. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

We must address the sheriff's office's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office

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<sup>1</sup>We note the sheriff's office received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

to decide whether requested information is excepted from public disclosure. *See id.* § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Further, 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 id.* § 552.301(e). We note the instant request for information is dated February 16, 2016. However, as of the date of this ruling, the sheriff's office has not provided a signed statement or sufficient evidence showing the date the sheriff's office received the request or submitted to this office a copy or representative sample of any of the requested information. Consequently, we find the sheriff'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 the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *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); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver), 665 at 2 n.5 (2000) (discretionary exceptions generally). In failing to comply with section 552.301, the sheriff's office has waived its claim under section 552.108. Thus, we have no choice but to order the sheriff's office to release the requested information in accordance with section 552.302 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/som

Ref: ID# 619301

c: Requestor