



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

October 11, 2016

Mr. Jerry D. Rochelle  
District Attorney  
The Bowie County District Attorney's Office  
601 Main Street  
Texarkana, Texas 75504

OR2016-22808

Dear Mr. Rochelle:

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# 629752.

The Bowie County District Attorney's Office (the "district attorney's office") received a request for all records pertaining to two specified cases and two specified personnel files. You state you have released some information. You claim the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.104, 552.108, and 552.1175 of the Government Code. We have considered the exceptions you claim. We have also received and considered comments from the requestor. *See Gov't Code* § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

We must address the obligations of district attorney's office under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 552.301. Pursuant to section 552.301(e), a governmental body is required to 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. *Id.* § 552.301(e). In this instance, you state the district attorney's office received the request for information on August 1, 2016. As of the date of this letter, the district attorney's office has not submitted to this office a copy or representative sample of the requested information. Although you state the requested information is "voluminous and difficult to compile," we note the fifteen-business-day deadline to submit a copy of the information requested is statutorily imposed on the district attorney's office by section 552.301(e), and this office is required to adhere to this provision when determining the timeliness of the submissions made by the district attorney's office for purposes of requesting a ruling under the Act. *See id.* §§ 552.301, .302, .306. Additionally, we note a governmental body may not decline to comply with the requirements of the Act on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976). Thus, we conclude the district attorney's office failed to comply with the procedural requirements mandated by section 552.301(e) regarding the information at issue.

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 Gov't Code* § 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. *See* 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, the district attorney's office has waived all of its discretionary exceptions to disclosure. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Although the district attorney's office also raises mandatory exceptions to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure or confidential by law. Thus, we have no choice but to order the requested information released 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/>

[ori\\_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 "Matthew Taylor", with a long horizontal flourish extending to the right.

Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/bhf

Ref: ID# 629752

Enc. Submitted documents

c: Requestor