



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 19, 2008

Ms. Sharron Faulkner
Public Information Coordinator
Comal County Sheriff's Office
3005 West San Antonio Street
New Braunfels, Texas 78130

OR2008-02247

Dear Ms. Faulkner:

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# 302486.

The Comal County Sheriff's Office (the "sheriff's office") received a request for information related to a specified incident report. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the obligations of the sheriff's office under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. You indicate that the sheriff's office's Criminal Investigation Division (the "CID") has the requested information in its possession. However, you explain that the public information coordinator (the "PIC") does not have access to this information until the CID declares the case to be open or closed. Under section 552.301(e), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure under the Act is required to submit to this office within fifteen-business-days of receiving the request (1) general 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). Thus, pursuant to section 552.301(e), all information in possession of the sheriff's office, regardless of whether the information is the possession of the CID or the PIC, is responsive to the request and must be submitted to our office for review. Therefore, even if the PIC does not have access to the records of the CID, to the extent the sheriff's office had the requested information at the time of the request, the sheriff's office was required by section 552.301(e) to submit to this office the requested information, or a representative sample of the information, within fifteen-business-days. In addition, you inform us that the sheriff's office received this request on November 30, 2007. However, you have yet to submit to this office a copy of all of the requested information, nor have you indicated that the information you have submitted is a representative sample of the requested information. Consequently, you did not meet the fifteen-business-day deadline and thus failed to comply with the procedural requirements of section 552.301(e).

We also find that the sheriff's office failed to comply with section 552.301(e-1), which provides the following:

A governmental body that submits written comments to the attorney general under Subsection (e)(1)(A) shall send a copy of those comments to the person who requested the information from the governmental body. If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the person must be a redacted copy.

Id. § 552.301(e-1). You state, and provide documentation showing, that the sheriff's office sent to the requestor a copy of its written comments submitted to this office pursuant to section 552.301(e)(1)(A). After reviewing the brief sent to the requestor, we determine that the sheriff's office redacted information from the copy that does not disclose or contain the substance of the information requested; therefore, we conclude that the sheriff's office also failed to comply with the procedural requirements of section 552.301(e-1) 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* Gov't Code § 552.007; 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). *But see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). In failing to comply with section 552.301, the sheriff's office has waived its claim under section 552.108. Therefore, the sheriff's office may not withhold any of the requested information under section 552.108 of the Government Code. As you raise no other arguments against the disclosure of the requested information, the sheriff's office must release all information responsive to the request, regardless of whether it is in the possession of the CID or the PIC.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Jordan Johnson".

Jordan Johnson
Assistant Attorney General
Open Records Division

JJ/jb

Ref: ID# 302486

Enc. Submitted documents

c: Ms. Linda Perine
1885 FM 2673, #12
Canyon Lake, Texas 78133
(w/o enclosures)