



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 18, 2009

Mr. W. Clayton Cain
Cullen, Carsner, Seerden & Cullen, L.L.P.
P.O. Box 2938
Victoria, Texas 77902-2938

OR2009-02078

Dear Mr. Cain:

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# 336648.

The Aransas County Sheriff's Office (the "sheriff"), which you represent, received a request for eighteen categories of information pertaining to two specific addresses and four named individuals.¹ You state you will release some of the requested information to the requestor. You state you do not have information responsive to a portion of the request.² You claim that portions of the remaining requested information are excepted from disclosure under sections 552.108 and 552.137 of the Government Code. We have considered the exceptions you claim.

¹As you have not submitted the written request for information, we take our description from your brief.

²We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

The Act imposes a duty on a governmental body seeking an open records decision to submit the following information within fifteen business days of receiving the written 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. Gov't Code § 552.301(e). The sheriff did not, however, submit arguments to this office explaining the applicability of its claimed exceptions, a copy of the written request for information, or a copy or representative samples of the information at issue. Thus, the sheriff failed to comply with the requirements of section 552.301(e).

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 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). In failing to comply with section 552.301, the sheriff has waived its claim under section 552.108 of the Government Code. We note the sheriff also raises section 552.137 of the Government Code. The applicability of this exception can provide a compelling reason for non-disclosure under section 552.302. However, because the sheriff has not submitted any responsive information for our review, we have no basis for finding any of the information confidential by law. We therefore conclude that the sheriff must release the requested information to the requestor.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink that reads "C. Alvarado". The signature is written in a cursive style with a large initial "C" and a clear last name.

Christina Alvarado
Assistant Attorney General
Open Records Division

CA/cc

Ref: ID# 336648

Enc. Submitted documents

cc: Requestor
(w/o enclosures)