



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 20, 2009

Mr. Gordon K. LeMaire  
Assistant District Attorney  
Cherokee County District Attorney's Office  
P.O. Box 450  
Rusk, Texas 75785

OR2009-06906

Dear Mr. LeMaire:

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# 343649.

The Cherokee County District Attorney's Office (the "district attorney") received a request for a signed oath of office, temporary transition statement, and a copy of an incident report involving a named individual.<sup>1</sup> You state you have released some of the information to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the district attorney's obligations under the Act. 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. *Id.*

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<sup>1</sup> As you have failed to submit a copy of the request for information, we take our description from your brief.

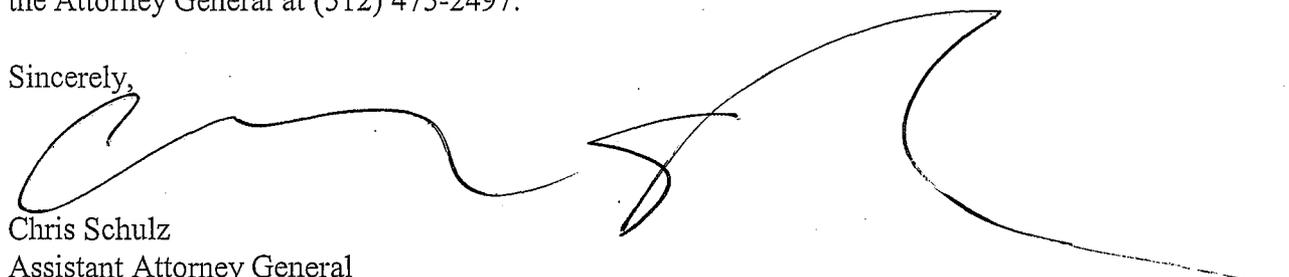
§ 552.301(e). As of the date of this ruling, you have failed to submit a representative sample of the responsive information or a copy of the written request for information. Consequently, we find that the district attorney failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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). Generally, a governmental body can overcome the presumption that information is public under section 552.302 by demonstrating that the information is confidential by law or that its disclosure affects third party interests. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. 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)*. In failing to comply with section 552.301, the district attorney has waived its claim under section 552.108. We therefore conclude that the district attorney must release the information at issue to the requestor. 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.oag.state.tx.us/open/index\\_orl.php](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,



Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

Ref: ID# 343649

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)