



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 25, 2010

Mr. Jason E. Moody  
Public Information Officer  
Cameron County District Attorney  
P.O. Box 2299  
Brownsville, Texas 78522-2299

OR2010-09355

Dear Mr. Moody:

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# 384331.

The Cameron County Sheriff's Office (the "sheriff") received a request for information related to a specified arrest. 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. We have also received and considered comments from the requestor. Gov't Code § 552.304(a) (authorizing person to submit written comments stating reasons why information at issue should or should not be released).

Initially, we address the requestor's contention that the sheriff did not comply with the procedural requirements of the Act. The requestor asserts that the sheriff failed to comply with sections 552.301(d) and 552.301(e-1) of the Government Code. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. *Id.* § 552.301(b). Pursuant to section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general

within ten business days of receiving the request for information. Gov't Code § 552.301(d). Section 552.301(e-1) requires a governmental body that submits written comments to the attorney general under subsection (e)(1)(A) to send a copy of those comments to the person who requested the information from the governmental body within fifteen business days of receiving the request for information. *Id.* § 552.301(e-1).

The sheriff received the request for information on April 6, 2010. Therefore, the ten-business-day deadline to seek a ruling under section 552.301(b) and provide information to the requestor pursuant to section 552.301(d) was April 20, 2010, and the fifteen-business-day deadline to provide information to the requestor pursuant to section 552.301(e-1) was April 27, 2010. The requestor asserts and provides documentation showing that he was not provided with a copy of the sheriff's communications with our office until May 18, 2010, when he requested a copy. We note that your request for a ruling was received by this office on April 22, 2010. You acknowledge that the sheriff did not provide the requestor with the information required by section 552.301 until May 18, 2010. Upon review, we find that the sheriff failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to provide the requestor with information required in section 552.301 results in the legal presumption the requested 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* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Section 552.108 is a discretionary exception to disclosure that protects the governmental body's interests and may be waived by the governmental body. Thus, in this case, you have not established a compelling reason to withhold the information at issue from the public. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 586 (1991) (governmental body may waive section 552.108). Therefore, none of the submitted information may be withheld under section 552.108. However, because section 552.130 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted information.<sup>1</sup>

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). Accordingly, the sheriff must withhold the Texas

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

driver's license number we have marked under section 552.130 of the Government Code<sup>2</sup>. The remaining submitted information must be released to the requestor.<sup>3</sup>

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, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 384331

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>3</sup>We note the information to be released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147.