



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 26, 2011

Mr. Samuel B. Katz
Chief Appellate Prosecutor
Comal County
150 North Seguin Avenue, Suite 314
New Braunfels, Texas 78130

OR2011-01335

Dear Mr. Katz:

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# 406981 (Comal County File No. 100R073).

The Comal County Sheriff's Office (the "sheriff") received a request for "the probable cause affidavit" pertaining to the arrest of the requestor's client. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor seeks a specified probable cause affidavit. You have submitted an incident report, which is not responsive to the instant request. The sheriff need not release non-responsive information in response to this request, and this ruling will not address that information.

Next, we must address the sheriff's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to

¹We note that you also raise, but have submitted no arguments under, other exceptions to disclosure. Accordingly, this decision does not address any of those exceptions. See Gov't Code § 552.301(e)(1)(A) (governmental body must submit written comments stating reasons why its claimed exceptions apply).

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). As of the date of this letter, you have not submitted to this office a copy or representative sample of the requested probable cause affidavit. Consequently, we find the sheriff failed to comply with the requirements of section 552.301.

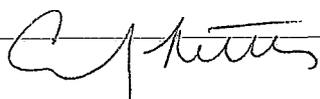
Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 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 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* ORD 630.

In failing to comply with section 552.301, the sheriff has waived its discretionary claims. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (Gov't Code § 552.103 may be waived); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Accordingly, the requested information may not be withheld under any of the claimed discretionary exceptions. Although section 552.130 of the Government Code can provide a compelling reason for nondisclosure of information under section 552.302, we have no basis for concluding that the requested information is excepted under this section because you failed to submit any portion of it to us for our review. Therefore, to the extent the information existed on the date the sheriff received the request and the sheriff possesses the information, we have no choice but to order you to release the information at issue. If you believe that the information at issue 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, 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# 406981

Enc. Submitted documents

c: Requestor
(w/o enclosures)