



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2011

Ms. Laura Garza Jimenez
County Attorney
County of Nueces
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2011-08860A

Dear Ms. Jimenez:

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# 428717.

You ask this office to reconsider Open Records Letter No. 2011-08860 (2011). In that ruling, we found you did not comply with section 552.301 of the Government Code because our office did not receive your request for a ruling until after the ten-business-day deadline. *See* Gov't Code § 552.301(b). Therefore, we ruled the requested information must be released pursuant to section 552.302. *See id.* § 552.302 (violation of section 552.301 results in legal presumption requested information is public and must be released absent a compelling reason to withhold it.) In subsequent communications with our office, you provided confirmation that your request was, in fact, submitted before the statutory deadline. Accordingly, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2011-08860 and serves as the correct ruling.

The Nueces County Sheriff's Office (the "sheriff") received two requests from the same requestor for certain "writs of execution returned with the notation 'nulla bona'" for a specified period of time. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See id.* § 552.304 (interested party may submit comments stating why information should or should not be released).

We note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, that:

(a) the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(17) information that is also in a public court record[.]

Id. § 552.022 (17). In this instance, the submitted information consists of court-filed documents. Thus, the sheriff must release the submitted information pursuant to section 552.022(a)(17) unless it is expressly confidential under other law. You assert that the submitted information is excepted under section 552.103 of the Government Code. However, section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No.542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Therefore, the sheriff may not withhold the submitted information under section 552.103. As you raise no further exception to disclosure of the submitted information, it must be released.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/em

Ref: ID# 428717

Enc. Submitted documents

c: Requestor
(w/o enclosures)