



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 1, 2012

Mr. Shane Britton  
Brown County Attorney  
Brown County Courthouse  
200 South Broadway  
Brownwood, Texas 76801

OR2012-06272

Dear Mr. Britton:

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# 452595.

The Brown County Sheriff's Office (the "sheriff's office") received two requests from the same requestor for sheriff's office deputy schedules and dispatch logs for a specified time period. You claim 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 representative sample of information.<sup>1</sup> We have also considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body that receives a request for information it wishes to withhold under the Act is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

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). You state the sheriff's office received the first request on February 22, 2012 and the second request on February 23, 2012. Thus, the sheriff's office fifteen-business-day deadlines were March 14, 2012 and March 15, 2012, respectively. However, the representative sample of information was submitted to this office in an envelope postmarked March 16, 2012. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the deadline period). Accordingly, we find the sheriff's office failed to comply with the requirements of section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 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* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public); *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 (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). 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). Although you assert the requested information is excepted under section 552.108 of the Government Code, this section is discretionary in nature. It serves only to protect a governmental body's interests, and may be waived. Thus, section 552.108 does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Consequently, the requested information may not be withheld under section 552.108. Accordingly, the requested information must be released pursuant to section 552.302 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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ana Carolina Vieira', with a long horizontal flourish extending to the right.

Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/ag

Ref: ID# 452595

Enc. Submitted documents

c: Requestor  
(w/o enclosures)