



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 9, 2012

Chief Deputy C. R. Servise  
Burnet County Sheriff's Office  
P.O. Box 1249  
Burnet, Texas 78611

Mr. Eddie Arredondo  
Burnet County Attorney  
220 South Pierce  
Burnet, Texas 78611

OR2012-06807

Dear Chief Deputy Servise and Mr. Arredondo:

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# 454105 (OR 1319).

The Burnet County Sheriff's Office (the "sheriff's office") received a request for the following information related to a specified incident: surveillance video for a specified time period, 911 calls, and photographs of a specified jail cell. You state the sheriff's office has no audio recordings of 911 calls related to the incident, but you have released the related call for service reports. You claim the submitted photographs and video recordings are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, some of which consists of a representative sample.<sup>1</sup>

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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 that submitted to this office.

Initially, we note some of the submitted videos do not fall within the time period specified by the requestor and thus are not responsive to the present request for information. This decision does not address the public availability of the non-responsive information, and the sheriff's office need not release that information in response to the present request.

We next address the obligations of the sheriff's office under the Act. Section 552.301 of the Government Code prescribes the procedures that 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 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 request on March 1, 2012. However, you did not submit the requested surveillance videos until April 19, 2012. *See id.* § 552.308 (prescribing requirements for proof of compliance with Gov't Code § 552.301). Therefore, we find the sheriff's office failed to comply with the requirements of subsection 552.301(e) for the surveillance videos submitted on April 19, 2012.

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 the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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 compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982).

Although you raise section 552.108 of the Government Code for the surveillance videos, this section is a discretionary exception 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). As such, it does not constitute a compelling reason to withhold information. Therefore, the sheriff's office may not withhold the surveillance videos under section 552.108 of the Government Code. Because your claim under section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this section to the videos submitted on

April 19, 2012. We will also address your claims regarding the timely submitted information.

You seek to withhold the submitted photographs under section 552.108 of the Government Code.<sup>2</sup> This section excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the submitted photographs relate to an ongoing criminal case. Based on your representation and our review of the submitted photographs, we find release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the sheriff’s office may withhold the submitted photographs under section 552.108(a)(1) of the Government Code.<sup>3</sup>

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information other statutes make confidential. You claim section 552.101 in conjunction with section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the “HSA”). Section 418.182 provides in part:

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

*Id.* § 418.182(a). The fact that information may generally be related to a security system does not make the information *per se* confidential under section 418.182. *See Open Records Decision No. 649 at 3* (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any

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<sup>2</sup>Although you raise section 552.101 of the Government Code in conjunction with section 552.108 of the Government Code, section 552.101 does not encompass other exceptions in the Act.

<sup>3</sup>As our ruling is dispositive, we do not address your remaining claim for this information.

confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See Gov't Code* § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The submitted video recordings reveal the locations of security surveillance cameras located throughout the Burnet County jail facility. You indicate the surveillance cameras are part of the jail facility's security system. Upon review, we find the submitted surveillance video recordings relate to the location of a security system used to protect public or private property from an act of terrorism or related criminal activity. *See generally Tex. Dep't of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (finding confidential under section 418.182 of the HSA video recording containing images recorded by security cameras in Texas Capitol hallway, because specifications of security system included cameras' capabilities and video recording demonstrated those capabilities through characteristics, quality, and clarity of images recorded). Accordingly, the sheriff's office must withhold the requested video recordings under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code.

In summary, the sheriff's office may withhold the submitted photographs under section 552.108(a)(1) of the Government Code. The sheriff's office must withhold the requested video recordings under section 552.101 of the Government Code in conjunction with section 418.182 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 454105

Enc. Submitted documents

c: Requestor  
(w/o enclosures)