



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 29, 2012

Mr. Bill Ballard  
First Assistant County Attorney  
Brazos County  
300 East 26<sup>th</sup> Street, Suite 1300  
Bryan, TX 77803

OR2012-08178

Dear Mr. Ballard:

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# 454865.

The Brazos County Sheriff's Office (the "sheriff's office") received a request for all employment information pertaining to a former sheriff's office employee. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.115, 552.117, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the sheriff's office did not fully comply with section 552.301 of the Government Code. Subsection (b) of section 552.301 requires a governmental body requesting an open records ruling from this office to "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth

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<sup>1</sup>Although you raise section 552.024 of the Government Code as an exception to disclosure, we note that this section is not an exception to public disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. See Gov't Code § 552.024. We note section 552.117 of the Government Code is the proper exception to assert.

business-day after the date of receiving the written request.” Gov’t Code § 552.301(b). While you raised sections 552.101, 552.103, 552.115, and 552.117 within the ten-business-day time period required by subsection 552.301(b), you did not raise sections 552.108 and 552.130 until after the ten-business-day deadline had passed. Thus, we find the sheriff’s office has failed to comply with section 552.301 with respect to its claims under sections 552.108 and 552.130 of the Government Code.

Generally, if a governmental body fails to timely raise an exception, that exception is waived. *See generally id.* § 552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Section 552.108 is a discretionary exception to disclosure which protects a governmental body’s interests and may be waived. *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.); Open Records Decision No. 177 (1977) (statutory predecessor to section 552.108 subject to waiver); 665 at 2 n.5 (2000) (discretionary exceptions generally). However, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision Nos. 586 (1991), 469 (1987). You state the Brazos County District Attorney’s Office (the “district attorney’s office”) asserts an interest in the submitted information. Therefore, we will determine whether the sheriff’s office may withhold the submitted information on behalf of the district attorney’s office under section 552.108. Further, section 552.130 of the Government Code can provide a compelling reason to overcome this presumption. Therefore, we will consider whether section 552.130 requires the sheriff’s office to withhold any of the submitted information. We will also consider your timely raised exceptions.

Section 552.108(a)(1) of the Government Code 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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the district attorney’s office states the information at issue pertains to a pending criminal prosecution and release of the information at issue would jeopardize the district attorney’s office’s prosecution of the case at hand. Based on this representation and our review, we conclude 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). Accordingly, the sheriff’s office may withhold the submitted

information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.<sup>2</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,



Sean Opperman  
Assistant Attorney General  
Open Records Division

SO/som

Ref: ID# 454865

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.