



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 7, 2014

Mr. Andrew Warthen
Assistant Criminal District Attorney
Bexar County
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205

OR2014-02416

Dear Mr. Warthen:

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# 513442.

The Bexar County Sheriff's Office (the "sheriff's office") received a request for a copy of the video of the specified incident, which resulted in the suspension of a named individual. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor seeks a copy of the video for a specified incident. You have submitted only the sheriff's office's investigation report of the incident at issue but not the video itself. We find the investigation report is not responsive to the request for information. This ruling does not address the public availability of non-responsive information, and the sheriff's office need not release it in response to this request. Further, although you state you have submitted a representative sample of the requested records, we find the investigation report is not representative of the requested video. Accordingly, we must address the sheriff's office's obligations under the Act.

¹Although you raised section 552.101 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we assume you have withdrawn this exception. See Gov't Code §§ 552.301, .302.

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 is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed 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. Gov't Code § 552.301(e). As noted above, you have submitted only an investigation report regarding the specified incident, not a copy of the requested video of the specified incident. Accordingly, we find you have failed to comply with the procedural 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 procedural requirements of section 552.301 results in the legal presumption that 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Thus, in failing to comply with section 552.301, the sheriff's office has waived its arguments under sections 552.103 and 552.108, and may not withhold the requested video under those sections. *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); *see also* Open Records Decision Nos. 177 (1977) (governmental body may waive statutory predecessor section 552.108), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Therefore, we have no choice but to order the requested information released pursuant to section 552.302. If you believe the information 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.texasattorneygeneral.gov/open/>

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 513442

Enc. Submitted documents

c: Requestor
(w/o enclosures)