



January 9, 2015

Ms. Sharon Chesser  
Administrative Assistant  
Karnes County Sheriff's Office  
210 West Calvert, Suite 110  
Karnes City, Texas 78118

OR2015-00430

Dear Ms. Chesser:

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# 549508.

The Karnes County Sheriff's Office (the "sheriff's office") received multiple requests for booking records during specified time periods. You claim the submitted information is exempted from disclosure under sections 552.108 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor seeks information pertaining to booking records only during certain time periods. Any information that falls outside of the specified time periods is not responsive to the instant requests. This ruling does not address the public availability of any information not responsive to the present requests, and the sheriff's office need not release non-responsive information.

We note the sheriff's office has redacted portions of the responsive information. We understand the sheriff's office will redact motor vehicle record information under section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.<sup>1</sup> However, you do not assert, nor does our

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<sup>1</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b).

review of the records indicate, you have been authorized to withhold the remaining information you have redacted without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the remaining redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, though, the sheriff's office should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

Next, we must address the procedural obligations of the sheriff's office under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) 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 id.* § 552.301(e). In this instance, the sheriff's office states it received the first request on April 7, 2014. Thus, the sheriff's office's fifteen-business-day deadline was April 28, 2014. However, you did not provide this office with the information required by section 552.301(e)(1) until December 19, 2014. Further, with respect to the remaining requests, you have not provided this office with a signed statement or otherwise sufficient evidence of the date the sheriff's office received the written requests as required by section 552.301(e)(3). *Id.* § 552.301(e)(3). Consequently, we find the sheriff's office failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with 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. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.108 of the Government Code, section 552.108 is a discretionary exception that protects only a governmental body's interests; as such, it may be waived. *See Simmons*, 166 S.W.3d at 350 (section 552.108 not compelling reason to withhold information under section 552.302); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver).

Thus, the sheriff's office may not withhold the remaining responsive information under section 552.108. However, because section 552.136 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address its applicability to the remaining responsive information.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Upon review, we find the sheriff's office has not demonstrated section 552.136 is applicable to the remaining responsive information; thus, the sheriff's office may not withhold it under that exception. As you do not raise another exception to disclosure of the remaining responsive information, including the information the sheriff's office has improperly redacted, the sheriff's office must release it.

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](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,



Lee Seidlits  
Assistant Attorney General  
Open Records Division

CLS/som

Ref: ID# 549508

Enc. Submitted documents

c: Requestor  
(w/o enclosures)