



February 3, 2015

Ms. Susan Fillion
Assistant County Attorney
Harris County Sheriff's Office
1200 Baker Street, 2nd Floor
Houston, Texas 77002

OR2015-02115

Dear Ms. Fillion:

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# 552499 (HCSO File Nos. 14SO30018 & 14SO700112).

The Harris County Sheriff's Office (the "sheriff's office") received two requests from separate requestors for all 9-1-1 calls, mobile data terminal transmission records, dispatch tapes and logs, and call slips regarding incidents that occurred on a certain date at a specified location.¹ You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information, part of which is a representative sample.²

We must address the sheriff's office's procedural obligations under the Act. 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

¹As you have not submitted copies of the requests for information for our review, we take our descriptions from your briefs to our office.

²We 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.

information it wishes to withhold under an exception to disclosure must 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. Gov't Code § 552.301(e). You state the sheriff's office received the first request for information on November 17, 2014, and the second request for information on December 5, 2014. As of the date of this letter, you have not submitted to this office copies of the written requests for information. Consequently, we find the sheriff's office failed to comply with the requirements of section 552.301(e).

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 the information is public and 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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). Although you seek to withhold the submitted information under section 552.108 of the Government Code, this exception is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, the sheriff's office may not withhold any of the submitted information under section 552.108. We note, however, some of the submitted information is subject to section 552.130 of the Government Code.³ Because section 552.130 can provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted information.

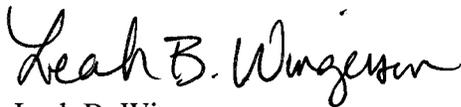
Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license, title or registration, or personal identification document issued by a Texas agency, or an agency of another state or country. Gov't Code § 552.130(a)(1)-(2). The submitted audio recording titled "D3 Radio" contains motor vehicle record information subject to section 552.130. Therefore, the sheriff's office must withhold this motor vehicle record information under section 552.130 of the Government Code. The sheriff's office must release the remaining information.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 552499

Enc. Submitted documents

c: Requestors
(w/o enclosures)