



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 20, 2015

Ms. Janie L. Johnson
Assistant Criminal District Attorney
County of Gregg
101 East Methvin, Suite 333
Longview, Texas 75601

OR2015-07558

Dear Ms. Johnson:

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# 560654.

The Gregg County Sheriff's Office (the "sheriff's office") received a request for the names and positions of current sheriff's office employees. You claim portions of the submitted information are excepted from disclosure under sections 552.108 and 552.152 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, you indicate, and we agree, some of the submitted information is not responsive to the present request. The sheriff's office need not release the non-responsive information you have marked in response to this request, and this ruling will not address that information.

Next, we must address the obligations of the sheriff's office under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(e), a governmental body must submit to this office, not later than the fifteenth business day after the date of its receipt of the request for information, (1) written comments stating why the governmental body's claimed exceptions apply to the information it seeks to withhold, (2) a copy of the written request for information, (3) a signed statement of the date on which the governmental body

¹ Although you raise section 552.151 of the Government Code in your brief to our office, we understand you to raise section 552.152 based on the substance of your argument.

received the request or evidence sufficient to establish that date, and (4) the specific information the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). You state the sheriff's office received the request for information on January 27, 2015. Thus, the sheriff's office's fifteen-business-day deadline was February 17, 2015. We received the information required by section 552.301(e) on February 24, 2015. There is no dated postmark on the envelope in which this information was sent to this office, and we are otherwise unable to determine whether you mailed the information required by section 552.301(e) on or before February 17, 2015. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we conclude the sheriff's office failed to comply with the procedural requirements mandated by section 552.301 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 the requested information is public and must be released unless the governmental body demonstrates a compelling reason 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 (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 Nos. 630 (1994), 586 (1991), 319 (1982). This office has held a compelling reason exists to withhold information when third-party interests are at stake or when information is made confidential by another source of law. *See* Open Records Decision No. 150 (1977) (construing predecessor statute). Although you claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See Simmons*, 166 S.W.3d at 350 (section 552.108 is not compelling reason to withhold information under section 552.302); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Because the sheriff's office failed to comply with section 552.301, the sheriff's office has waived its claim under section 552.108. Accordingly, no portion of the submitted information may be withheld under section 552.108 of the Government Code. However, because you raise section 552.152 of the Government Code, which makes information confidential under the Act and can provide a compelling reason to withhold information, we will consider your remaining argument against disclosure of the submitted information.

You seek to withhold the identifying information of undercover officers from the submitted information under section 552.152 of the Government Code. Section 552.152 provides,

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You represent the release of the undercover officers' identities would subject the officers to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identities of the undercover officers within the submitted information. Accordingly, the sheriff's office must withhold the identifying information of the undercover officers, which you have marked, under section 552.152 of the Government Code. As you raise no other exceptions to disclosure, the sheriff's office must release the remaining information.

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,



Alley Latham
Assistant Attorney General
Open Records Division

AKL/dls

Ref: ID# 560654

Enc. Submitted documents

c: Requestor
(w/o enclosures)