



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 12, 2015

Ms. Susan Fillion
Assistant County Attorney
Harris County Sheriff's Office
1200 Baker Street, Second Floor
Houston, Texas 77002-1206

OR2015-09224

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# 563277 (HCSO File No. 14SO400151).

The Harris County Sheriff's Office (the "sheriff's office") received a request for the 9-1-1 recording pertaining to a specified incident. You claim the requested 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.

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(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b).

The sheriff's office states it received the request for information on February 15, 2015. We note February 15, 2015, was a Sunday; therefore, for purposes of the Act, we find the sheriff's office is deemed to have received the request on February 16, 2015. You do not inform us the sheriff's office was closed for any business days between February 16, 2015, and March 2, 2015. Accordingly, the sheriff's office was required to provide the information required by section 552.301(b) by March 2, 2015. However, the sheriff's office submitted the required information in an envelope meter-marked March 4, 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). Accordingly, 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 there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third-party interests. *See* ORD 630.

The sheriff's office claims section 552.108 of the Government Code for the submitted information. However, this exception is discretionary in nature. It serves to protect 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 in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to comply with section 552.301, the sheriff's office has waived its argument under section 552.108, and may not withhold the submitted information on this basis. As no further exceptions to disclosure have been raised, the submitted information must be released.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 563277

Enc. Submitted documents

c: Requestor
(w/o enclosures)