



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 27, 2015

Mr. James A. Kosub  
Counsel for Schleicher County  
Kosub & Griffin, L.L.P.  
P.O. Box 460  
Eldorado, Texas 76936

OR2015-10307

Dear Mr. Kosub:

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# 564835.

The Schleicher County Sheriff's Department (the "sheriff's department"), which you represent, received a request for twelve categories of information pertaining to a specified incident. You state the sheriff's department does not have information responsive to portions of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the sheriff's department's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>Although you also raise section 552.101 of the Government Code, you provide no arguments to support this claim. Therefore, we assume you have withdrawn your claim under section 552.101. *See Gov't Code* §§552.301, 302.

state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). You state the sheriff's department received the instant request for information on March 5, 2015. Thus, the sheriff's department's ten-business day deadline was March 19, 2015. However, you did not request a ruling from this office until March 20, 2015. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, we conclude the sheriff's department 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 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 the sheriff's department claims section 552.103 for the submitted information, that exception is discretionary in nature and may be waived. Accordingly, section 552.103 does not constitute a compelling reason to withhold information. *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. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the sheriff's department may not withhold any portion of the submitted information under section 552.103 of the Government Code. However, we note some of the submitted information is subject to section 552.130 of the Government Code, which makes information confidential and can provide a compelling reason to withhold information.<sup>3</sup> Accordingly, we will consider the applicability of section 552.130 of the Government Code to the submitted information.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the sheriff's department must withhold the motor vehicle record information we have marked under

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<sup>3</sup>The 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).

section 552.130 of the Government Code. As no other exceptions to disclosure have been raised, the sheriff's department must release the remaining information to this requestor.<sup>4</sup>

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,



Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/cbz

Ref: ID# 564835

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note the requestor has a right of access beyond that of the general public to some of the information being released that pertains to his client. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Accordingly, if the sheriff's department receives another request for this information from an individual other than this requestor, the sheriff's department must again seek a ruling from this office.