



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 14, 2015

Ms. Rebecca R. Walton  
County Attorney  
Office of the County Attorney  
Hardin County Sheriff's Office  
P.O. Box 516  
Kountze, Texas 77625

OR2015-26181

Dear Ms. Walton:

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# 596858.

The Hardin County Sheriff's Office (the "sheriff's office") received a request for a specified report. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the sheriff's office's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. *See* Gov't Code § 552.301(b). You state the sheriff's office received the request for information on November 4, 2015. Thus, the sheriff's office's ten-business-day deadline was November 19, 2015. The envelope in which the sheriff's office sent its request for a ruling is post-marked November 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). Consequently, the sheriff's office failed to comply with the requirements of section 552.301(b) 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 generally results in the waiver

of its claims to withhold the information at issue, 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); *see also* Open Records Decision No. 630 (1994). Although the sheriff's office asserts the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests. *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); Open Records Decision No. 177 (1977) (statutory predecessor to section 552.108 subject to waiver); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Thus, the sheriff's office's claims under sections 552.103 and 552.108 are not compelling reasons to overcome the presumption of openness, and the sheriff's office may not withhold the report at issue on either of those grounds. Accordingly, the sheriff's office must release the submitted information in accordance with section 552.302 of the Government Code.<sup>1</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,



Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/bhf

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<sup>1</sup>We note some of the information being released contains confidential information to which the requestor has a right of access. *See* Gov't Code § 552.023(a). If the sheriff's office receives another request for this particular information from a different requestor, then the sheriff's office should again seek a decision from this office.

Ref: ID# 596858

Enc. Submitted documents

c: Requestor  
(w/o enclosures)