



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 21, 2015

Ms. Yahitza Nunez
Assistant Criminal District Attorney
Hays County Criminal District Attorney's Office
712 South Stagecoach Trail, Suite 2057
San Marcos, Texas 78666

OR2015-26831

Dear Ms. Nunez:

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# 594381 (Reference No. 15-0684).

The Hays County District Attorney's Office (the "district attorney's office") received a request for a specified search warrant. 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 representative sample of information.¹

Initially, we note the request is for a specified search warrant. Accordingly, the submitted information that does not consist of the specified search warrant is not responsive to the instant request. The district attorney's office need not release nonresponsive information in response to this request, and this ruling will not address that information.

Initially, we must address the district attorney's office's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to

¹We 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 that those records contain substantially different types of information than that submitted to this office.

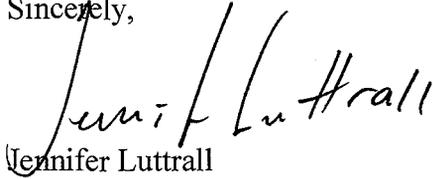
section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request: (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of 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. *See* Gov't Code § 552.301(e)(1)(A)-(D). In this instance, you state the district attorney's office received the request for information on October 27, 2015. You inform us the district attorney's office was closed on October 30, 2015. We note this office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the district attorney's office's fifteen-business-day deadline was November 18, 2015. However, the envelope in which you submitted the responsive information was meter-marked December 2, 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, we find the district attorney's office failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake, or when information is confidential by law. Open Records Decision No. 150 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and generally is not a compelling reason to withhold information. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). In failing to comply with section 552.301, the district attorney's office has waived its claim under section 552.108 with respect to the responsive information. You raise no further exceptions to disclosure, the responsive 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 594381

Enc. Submitted documents

c: Requestor
(w/o enclosures)