



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 4, 2015

Mr. Rod Ponton  
83rd District Attorney  
123 North 6th Street  
Alpine, Texas 79830

OR2015-08581

Dear Mr. Ponton:

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# 562353.

The 83rd District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified incident.<sup>1</sup> The district attorney's office states it has released some information. The district attorney's office claims the remaining requested information is excepted from disclosure under section 552.108 of the Government Code.<sup>2</sup> We have considered the exception the district attorney's office claims.

We must address the procedural obligations of the district attorney's office under section 552.301 of the Government Code when requesting a decision from this office under

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<sup>1</sup>As the district attorney's office has not submitted a copy of the request for information, we take our description from the district attorney's office's brief.

<sup>2</sup>Although the district attorney's office does not cite to section 552.108 of the Government Code in its brief, we understand the district attorney's office to raise this section based on the substance of its arguments.

the Act. Pursuant to section 552.301(e), a governmental body must 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). In this instance, the district attorney's office has not submitted for our review a copy of the request, a copy or representative sample of the information requested, or a signed statement or otherwise sufficient evidence of the date the district attorney's office received the written request. Consequently, we find the district attorney's office failed to comply with 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 that 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, 381-81 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although the district attorney's office raises section 552.108 of the Government Code, we note section 552.108 is a discretionary exception that does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 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). Accordingly, in failing to comply with section 552.301 of the Government Code, the district attorney's office has waived its argument under section 552.108 and may not withhold the requested information on that basis. Therefore, we have no choice but to order the district attorney's office to release the requested information in accordance with section 552.302 of the Government Code.

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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/dls

Ref: ID# 562353

c: Requestor