



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 11, 2015

Mr. Mark C. Henkes  
County Attorney  
Hamilton County  
P.O. Box 706  
Hamilton, Texas 76531

OR2015-11525

Dear Ms. Henkes:

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# 566997.

The Hamilton County Sheriff's Office (the "sheriff's office") received a request for radio and video recordings from a specified period of time. You claim the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered your argument and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request for information. The requestor only seeks radio and video recordings from a specified time. Thus, the submitted offense report is not responsive to the request. The ruling does not address the public availability of the non-responsive information and that information need not be released.

Next, we must address the sheriff's office's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under 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. Gov't Code § 552.301(e). In this instance, you state the sheriff's office received the request for information on March 31, 2015. You do not inform us the sheriff's office was closed for any business days between March 31, 2015, and April 21, 2015. Accordingly, the fifteen-business-day deadline was April 21, 2015. However, the sheriff's office submitted the responsive information required under subsection and 552.301(e) in an envelope meter-marked April 24, 2015. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the deadline period). Consequently, we find the sheriff'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 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).

Sections 552.103 and 552.108 of the Government Code are discretionary exceptions to disclosure and may be waived. *See* Gov't Code § 552.007; *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 Gov't Code § 552.103); 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 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). In failing to comply with the requirements of section 552.301, the sheriff's office has waived sections 552.103 and 552.108. Accordingly, the sheriff's office may not withhold the responsive information under section 552.103 or section 552.108. We note, however, some of the submitted information is subject to section 552.130 of the Government Code.<sup>1</sup> Because section 552.130 can provide a compelling reason to withhold information, we will consider the applicability of this section to the responsive 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 a personal

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<sup>1</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).

identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the sheriff's office must withhold any discernible audible or visible motor vehicle record information in the responsive video recordings under section 552.130 of the Government Code. The remaining 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](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,

A handwritten signature in cursive script that reads "Katelyn Blackburn-Rader".

Katelyn Blackburn-Rader  
Assistant Attorney General  
Open Records Division

KB-R/akg

Ref: ID# 566997

Enc. Submitted documents

c: Requestor  
(w/o enclosures)