



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 1, 2016

Ms. Elizabeth Dorsey
Assistant District Attorney
Waller County
645 12th Street
Hempstead, Texas 77445

OR2016-04868

Dear Ms. Dorsey:

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# 600027.

Waller County (the "county") received a request for the personnel records of a named officer with the county sheriff's office.¹ You state the county has released some of the requested information. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim.

We must address the county's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), 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 claimed 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

¹As you have not submitted a copy of the request for information, we take our description from your brief.

exceptions apply to which parts of the documents. Gov't Code § 552.301(e). The county received the request for information on December, 3 2015. You state the county sought and received clarification of the information requested on December 8, 2015. *See id.* § 552.222(b) (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). As of the date of this letter, you have not submitted arguments to this office arguments explaining why the stated exceptions apply, a copy of the written request for information, or a copy or representative sample of the information requested. Accordingly, we conclude the county failed to comply with the requirements of section 552.301.


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. 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 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). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Because the county has failed to comply with the procedural requirements of the Act, the county has waived its claim under section 552.108 of the Government Code. *See* Open Records Decision Nos. Nos. 177 (1977) (governmental body may waive statutory predecessor to section 552.108), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Although the county also raises mandatory exceptions to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure or confidential by law. Thus, we have no choice but to order the remaining requested information released pursuant to section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 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](#), 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 black ink, appearing to read "N. A. Ybarra".

Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bw

Ref: ID# 600027

Enc. Submitted documents

c: Requestor
(w/o enclosures)