



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 20, 2016

Mr. Jerry D. Rochelle  
Criminal District Attorney  
Bowie County Criminal District Attorney's Office  
601 Main  
Texarkana, Texas 75504

OR2016-13965

Dear Mr. Rochelle:

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# 615476.

The Bowie County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified case.<sup>1</sup> You claim the requested information is not subject to the Act, or in the alternative, excepted from disclosure under rule 503 of the Texas Rules of Evidence.<sup>2</sup> We have considered your arguments.

We must address the district attorney office's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). Section 552.301(e) requires the governmental

---

<sup>1</sup>As you have not submitted a copy of the request for our review, we take our description of the requested information from your brief.

<sup>2</sup>Although you raise section 552.101 of the Government Code in conjunction with rule 503 of the Texas Rules of Evidence, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

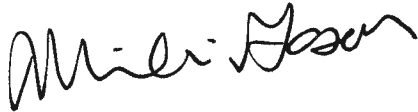
body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *Id.* § 552.301(e). You acknowledge you did not submit the information required by section 552.301(b) within the ten-business-day deadline. Moreover, you do not establish the date the district attorney's office received the request for information, nor have you submitted to this office a copy of the written request for information, comments explaining why the stated privilege applies, or a copy or representative sample of the information requested. Consequently, we find the district attorney's office 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 information is public and must be released unless the governmental body overcomes this presumption by demonstrating a compelling reason to withhold the information. *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); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Although you raise rule 503 of the Texas Rules of Evidence, this privilege is discretionary in nature. It protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision No. 676 at 6 (2002) (attorney-client privilege under section 552.107(1) and rule 503 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the district attorney's office may not withhold the requested information under rule 503. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Although you also claim the requested information is not subject to the Act, because you have not submitted the requested information for our review, we have no basis for finding any of the information is not subject to the Act. Thus, we have no choice but to order the requested information released to the requestor pursuant to 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,

A handwritten signature in black ink that reads "Mili Gosar". The signature is written in a cursive, flowing style.

Mili Gosar  
Assistant Attorney General  
Open Records Division

MG/akg

Ref: ID# 615476

c: Requestor