



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 6, 2016

Ms. Barbara Armstrong
Deputy Managing Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2016-15332

Dear Ms. Armstrong:

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# 617269 (C.A. File No. 16PIA0203).

The Harris County Sheriff's Office (the "sheriff's office") received a request for all communications between the sheriff's office and the Commission on Accreditation for Law Enforcement Agencies, Inc. for a specified time period. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

We must address the sheriff's office's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to

¹We assume that 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(b), the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). The sheriff's office states it received the request for information on April 7, 2016. The sheriff's office informs us it was closed on April 18, 2016. We note this office does not count the date the request was received or days the governmental body was closed for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the sheriff's office's ten-business-day deadline was April 22, 2016. However, the envelope in which the sheriff's office requested a decision from this office bears a postmark of April 29, 2016. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the sheriff's office failed to comply with the procedural requirements mandated by 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 information is public and 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) (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 exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although the sheriff's office asserts the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code, these are discretionary exceptions to disclosure and may be waived. *See* Gov't Code § 552.007; 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, governmental body may waive section 552.111), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, in failing to comply with the requirements of section 552.301, the sheriff's office has waived its claims under sections 552.108 and 552.111 of the Government Code. Thus, the city may not withhold any of the submitted information under section 552.108 or section 552.111 of the Government Code. As no other exceptions to disclosure have been raised, the sheriff's office must release the submitted information.

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 'Cristian Rosas-Grillet', with a long horizontal flourish extending to the right.

Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/bw

Ref: ID# 617269

Enc. Submitted documents

c: Requestor
(w/o enclosures)