



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 9, 2016

Mr. Thomas Wilson
Assistant Criminal District Attorney
Smith County Criminal District Attorney's Office
100 North Broadway, 4th Floor
Tyler, Texas 75702

OR2016-25043

Dear Mr. Wilson:

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# 633910.

The Smith County Criminal District Attorney's Office (the "district attorney's office") received a request for unedited video recordings related to two specified incidents. You assert the district attorney's office need not comply with the request to release the requested information pursuant to section 552.028 of the Government Code. In the alternative, you claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered your submitted arguments and reviewed the submitted information.

Initially, you assert the district attorney's office need not comply with the instant request pursuant to section 552.028 of the Government Code. Section 552.028 provides as follows:

(a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility; or

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under [the Act].

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

(c) In this section, "correctional facility" means:

(1) a secure correctional facility, as defined by Section 1.07, Penal Code;

(2) a secure correctional facility and a secure detention facility, as defined by Section 51.02, Family Code; and

(3) a place designated by the law of this state, another state, or the federal government for the confinement of a person arrested for, charged with, or convicted of a criminal offense.

Gov't Code § 552.028. We understand you to assert the district attorney's office is not required to release information to the requestor pursuant to section 552.028 of the Government Code because the requestor is the agent of an incarcerated individual. However, the requestor does not indicate she is acting as the agent of the incarcerated individual, and you have not provided any arguments establishing the requestor is, in fact, acting as the incarcerated individual's agent. Therefore, we conclude section 552.028 of the Government Code does not permit the district attorney's office to decline to comply with this request.

Next, we must address the district attorney's office'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. *See id.* § 552.301. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(a), (b). In addition, pursuant to section 552.301(e) of the Government Code, 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 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. *Id.* § 552.301(e)(1)(A)-(D). In this instance, you state the district attorney's office received the request for information on July 20, 2016. You do not inform us the district attorney's office

was closed for any business days between July 20, 2016 and August 10, 2016. Accordingly, the district attorney's office's ten-business-day deadline was August 3, 2016, and its fifteen-business-day-deadline was August 10, 2016. However, the envelope in which you submitted your request for a decision and the information required by section 552.301(e)(1)(A)-(C) was meter-marked September 6, 2016. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the district attorney's office failed to comply with the requirements of 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 requirements of section 552.301 results in the legal presumption that the 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 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public); *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); *see also* 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 you assert the requested information is excepted under section 552.103 of the Government Code, this section is discretionary in nature. It serves only to protect a governmental body's interests and may be waived; thus, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, the requested information may not be withheld under section 552.103 of the Government Code. However, section 552.130 of the Government Code makes information confidential and, thus, can provide a compelling reason to overcome the presumption of openness.¹ Therefore, we will address the applicability of this section to the submitted 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 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 district attorney's office must withhold any discernible audible or visible motor vehicle record

¹The 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).

information in the submitted video recordings under section 552.130 of the Government Code. The district attorney's office must release the remaining 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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/akg

Ref: ID# 633910

Enc. Submitted documents

c: Requestor
(w/o enclosures)