



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 13, 2017

Mr. Robert J. Davis
Counsel for Collin County Sheriff's Office
Matthews, Shiels, Knott, Eden, Davis & Beanland, LLP
8131 LBJ Freeway, Suite 700
Dallas, Texas 75251

OR2017-03248

Dear Mr. Davis:

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# 645528 (Ref. No. 1600/67702).

The Collin County Sheriff's Office (the "sheriff's office"), which you represent, received a request for 1) the sheriff's office's policy manual, 2) any agreement between the Collin County Deputies Association and Collin County, and 3) three categories of information pertaining to deputies of the sheriff's office. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the procedural obligations of the sheriff's office 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 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* Gov't Code § 552.301(a), (b). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving a written request for information (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 exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1).

You state the sheriff's office received a letter from the requestor on November 21, 2016, asserting the requestor had submitted the instant request for information to the sheriff's office via e-mail on August 8, 2016. Section 552.301(c) states a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by e-mail. *Id.* § 552.301(c). Although you inform us the sheriff's office searched the inbox of the sheriff's office's designated e-mail address after receiving the requestor's letter and did not find the requestor's e-mail from August 8, 2016, you also inform us Collin County's IT department (the "county") confirmed that the requestor's e-mail from August 8, 2016, was received in the county's computer system. You state the sheriff's office has experienced similar delivery problems with its designated e-mail address and cannot explain why certain e-mails may or may not be delivered to the designated e-mail address' inbox. While we acknowledge the technical difficulties the sheriff's office is experiencing in accessing its e-mail, we nevertheless note the date used for calculating a governmental body's deadlines under section 552.301 is the date the request is received, not when the governmental body becomes aware of the request. *See id.* § 552.301. Thus, we find the sheriff's office received the instant request for information on August 8, 2016.

Accordingly, the sheriff's office's ten-business-day and fifteen-business-day deadlines were August 22, 2016, and August 29, 2016, respectively. However, you did not request a ruling from this office until December 2, 2016. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the sheriff's office failed to comply with the requirements of section 552.301 in requesting this decision from our office.

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 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). Although you raise section 552.108 of the Government Code for the submitted information, this section is discretionary in nature. It serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information. *See* Open Records Decision Nos. 665 at 2 n.5

(2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the sheriff's office has waived its claim under section 552.108 for the submitted information. However, because section 552.101 of the Government Code makes information confidential, and thus, can provide a compelling reason to overcome the presumption of openness, we will consider your argument under section 552.101.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes. As part of the Texas Homeland Security Act, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. Section 418.176 provides, in relevant part:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

(1) relates to staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency;

(2) relates to a tactical plan of the provider; or

(3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Id. § 418.176(a). Section 418.182 provides, in relevant part:

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

(b) Financial information in the possession of a governmental entity that relates to the expenditure of funds by a governmental entity for a security system is public information that is not excepted from required disclosure under Chapter 552.

Id. § 418.182(a), (b). The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the Texas Homeland Security Act. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the Texas Homeland Security Act must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the submitted information relates to the efforts of the sheriff's office to detect acts of terrorism and other related criminal activity and to protect the public from such activity. You also state the release of the submitted information would allow potential wrongdoers to thwart the sheriff's office's crime and terrorism countermeasures. Upon review, we find the information we have marked relates to staffing requirements of a law enforcement agency or a tactical plan of the provider and is maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Therefore, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.¹ However, we find the sheriff's office has failed to demonstrate how any of the remaining information relates to staffing requirements or a tactical plan of an emergency response provider. Additionally, we find the sheriff's office has failed to demonstrate the remaining information relates to the specifications, operating procedures, or location of a security system used to protect public or private property from terrorism or related criminal activity. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with sections 418.176 or 418.182 of the Government Code. The sheriff's office must release the remaining information.

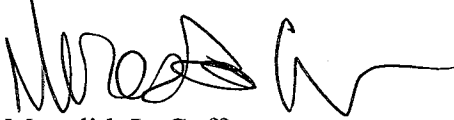
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/bw

Ref: ID# 645528

Enc. Submitted documents

c: Requestor
(w/o enclosures)