



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 11, 2017

Ms. Pamela L. Elliott
Sheriff
Edwards County
P.O. Box 156
Rocksprings, Texas 78880

OR2017-23121

Dear Ms. Elliott:

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# 681141.

The Edwards County Sheriff's Office (the "sheriff's office") received a request for the affidavit in support of a specified search warrant. We understand the sheriff's office has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. 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).

Initially, we note some of the submitted information, which we marked, is not responsive to the present request because it does not consist of the requested affidavit or was created after the date the sheriff's office received the request for information. This ruling does not address the public availability of the non-responsive information, and the sheriff's office need not release it in response to this request.

Next, we must address the sheriff's office's obligations under section 552.301 of the Government Code. Section 552.301 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(b) of the Government Code, a 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(b). Additionally, under section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the 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. *See id.* § 552.301(e). You inform us the sheriff's office received the request for information on June 5, 2017. Thus, the sheriff's office was required to request a decision from this office by June 19, 2017, and to submit the information required by section 552.301(e) by June 26, 2017. However, the envelope in which you submitted your request for a decision and the information required by section 552.301(e) was meter-marked August 14, 2017. *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 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 procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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). The sheriff's office claims sections 552.103 and 552.108 of the Government Code for the information at issue. However, we find you have failed to establish a compelling reason to address the exceptions you claim. As you raise no further exceptions to disclosure, the sheriff's office must release the responsive 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 "KH", written over a horizontal line.

Kieran Hillis
Assistant Attorney General
Open Records Division

KH/sb

Ref: ID# 681141

Enc. Submitted documents

c: Requestor
(w/o enclosures)