



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 3, 2020

Mr. Aaron M. DiIorio  
Legal Assistant  
Waller County Criminal District Attorney's Office  
645 12th Street  
Hempstead, Texas 77445

OR2020-06615

Dear Mr. DiIorio:

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# 814704.

The Waller County Criminal District Attorney's Office (the "district attorney's office") received a request for certain information pertaining to a specified case. The district attorney's office claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the district attorney's office claims and reviewed the submitted information.

We must address the district attorney's 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. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). The district attorney's office received the request for information on December 3, 2019. The district attorney's office does not inform us it was closed for any business days between December 3, 2019, and December 17, 2019. This office does not count the date the request was received or holidays for purposes of calculating a governmental body's deadlines under the Act. Accordingly, the district attorney's office was required to provide the information required by section 552.301(b) by December 17, 2019. However, the envelope in which the district attorney's office provided the information required by section 552.301(b) bears a certified mail tracking number that indicates it was mailed on December 18, 2019, and the district

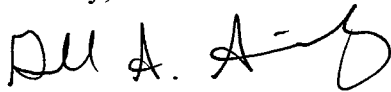
attorney's office provides no further satisfactory proof the envelope was deposited in the mail by December 17, 2019. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we conclude the district attorney'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 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 district attorney's office claims section 552.108 of the Government Code for the submitted information. However, we find the district attorney's office has failed to establish a compelling reason to address its claimed exception. Accordingly, the district attorney's office must release the submitted information pursuant to section 552.302 of the Government Code.<sup>1</sup>

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Gerald Arismendez  
Assistant Attorney General  
Open Records Division

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<sup>1</sup> We note the requestor has a right of access to some of the information being released in this instance. *See Gov't Code* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, if the district attorney's office receives another request for the same information from a different requestor, the district attorney's office must again seek a decision from this office.

Ref: ID# 814704

Enc. Submitted documents

c: Requestor  
(w/o enclosures)