



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 24, 2022

Mr. Lloyd S. Kleiman  
Assistant District Attorney  
Wharton County District Attorney's Office  
327 East Milam Street  
Wharton, Texas 77488

OR2022-25594

Dear Mr. Kleiman:

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# 967978.

The Wharton County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. The sheriff's office claims the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the sheriff's office claims.

We must address the obligations of the sheriff's office 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). Further, pursuant to section 552.301(e), a governmental body must 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. *See id.* § 552.301(e). The sheriff's office received the request for information on June 2, 2022. The sheriff's office does not inform us it was closed for any business days between June 2, 2022, and June 23, 2022. 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 sheriff's office was required to provide the information required by section 552.301(b) by June 16, 2022. Moreover, the sheriff's office was required to provide the information required by section 552.301(e) by June 23, 2022. We note the envelope in which the sheriff's office provided the information required by section 552.301(b) does not bear a postmark and the sheriff's office provides no otherwise satisfactory proof that it was deposited in the mail or with a common or contract carrier by June 16, 2022. *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). Further, as of this date, the sheriff's office has not submitted to this office a copy or representative sample of the information requested. Consequently, we conclude the sheriff'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 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, 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). As the sheriff's office has not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure. Thus, we have no choice but to order the requested information released pursuant to section 552.302 of the Government Code.

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 A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/jm

Ref: ID# 967978

Enc. Submitted documents

c: Requestor  
(w/o enclosures)