ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 18, 2003

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2003-5782

Dear Mr. Mann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186102.

The City of Garland Police Department (the "department") received a request for access to or a copy of a videotape pertaining to a particular DWI case. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. The department received the present request for information on May 27, 2003. The department did not request a decision from this office until June 12, 2003. Consequently, the department failed to request a decision within the ten business-day period mandated by section 552.301(a) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). Section 552.108 of the Government Code, which protects law enforcement interests, is a discretionary exception and generally does not provide a compelling reason to overcome the presumption of openness. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive section 552.108), 522 at 4 (1989) (discretionary exceptions in general). ***But see***

Open Records Decision Nos. 630 at 3 (1994), 586 at 3 (1991) (need of another governmental body to withhold information under section 552.108 can provide a compelling reason under section 552.302). Therefore, you may not withhold the requested information under section 552.108 of the Government Code.

However, we note that the requested videotape contains confidential information. Section 552.119 of the Government Code excepts from public disclosure a photograph of a peace officer that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. Open Records Decision No. 502 (1988). The submitted information includes a videotape that depicts peace officers and it does not appear that any of the exceptions are applicable. You have not informed us that the peace officers have executed any written consent to disclosure. Thus, the department must withhold any portion of the submitted videotape that includes the image of a peace officer under section 552.119, unless the department obtains written consent from the peace officers for their disclosure. The remaining portions of the videotape are not protected under section 552.119 of the Government Code and must be released to the requestor.[1] If, however, the department is unable to obscure the faces of peace officers on the videotape, or otherwise remove the portions of the videotape that include the images of peace officers, then the department must withhold the videotape in its entirety under section 552.119.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

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[1] We note that the submitted information contains information that would be confidential under section 552.101 of the Government Code in conjunction with common-law privacy if requested by another requestor. Under section 552.023 of the Government Code, a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests. Gov't Code § 552.023(a). Section 552.101 is designed to protect the individual to whom the information relates. The requestor, in this instance, has a special right of access under section 552.023 to his own confidential information. We note, however, that should the department receive another request for this same information from a person who would not have a special right of access to it, the department should resubmit this same information and request another ruling.

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

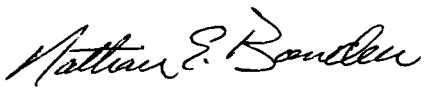
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/JEB/sdk

Ref: ID# 186102

Enc: Submitted documents

c: Mr. Adam D. Peppel
4236 Saturn Road, Apt. 260
Garland, Texas 75041
(w/o enclosures)