



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 10, 2007

Ms. P. Armstrong
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2007-11794

Dear Ms. Armstrong:

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# 288579.

The Dallas Police Department (the "department") received a request for incident report number 339325-T. You claim that the submitted 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 address the department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after receiving the written request for information. *See Gov't Code* § 552.301(b). The documents you have submitted indicate that the department received the initial request on June 2, 2007. We note that because the request was received on a Saturday, we will consider the request received on the first business day after that date, June 4, 2007. You state that on June 6, 2007 the department requested clarification. *See id.* § 552.222(b) (governmental body may ask requestor to clarify or narrow request). Thus, the ten business day time period to request a decision from us under section 552.301(b) was tolled on the date that the department sought clarification of the request from the requestor. *See Gov't Code*

§ 552.301(b); *see also* Open Records Decision No. 663 at 5 (1999) (clarification does not trigger a new ten business day time interval, but merely tolls the ten business day deadline during the clarification or narrowing process, which resumes upon receipt of the clarification or narrowing response). You have provided documentation showing that the department received the requestor's clarification on June 20, 2007. Accordingly, we conclude that the ten business day deadline for requesting a decision from our office was July 2, 2007. However, the department did not request a decision from our office until July 4, 2007. Thus, we conclude that the department failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision from us.

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 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); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open records Decision No. 177 (1977) (statutory predecessor to section 552.108 subject to waiver); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). In failing to comply with section 552.301, the department has waived its claims under section 552.108. As you raise no other exception to disclosure, the submitted report must be released to the requestor.

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 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, upon receiving this ruling, the governmental body

will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/jh

Ref: ID# 288579

Enc. Submitted documents

c: Mr. Michael Lane
6841 Atha Drive
Dallas, Texas 75217
(w/o enclosures)