



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 20, 2009

Mr. Robert C. Wendland
Rapier, Wilson & Wendland, P.C.
103 West McDermott
Allen, Texas 75013-2782

OR2009-02251

Dear Mr. Wendland:

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# 335383.

The Town of Northlake (the "town"), which you represent, received a request for any information pertaining to a specified incident, including any videotape recording of the incident. You state that the town will provide the requestor with the incident report and booking report. You claim that the submitted witness statement and dashboard video recording are 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 town's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) requires a governmental body to submit to this office a copy of the specific information requested or representative samples not later than the fifteenth business day after the date of its receipt of the written request for information. Gov't Code § 552.301(e)(1)(D). You state, and the request indicates, that the town received the request on November 25, 2008. Thus, the fifteen business day deadline was December 18, 2008. The town timely submitted the witness statement it seeks to withhold for our review on December 9, 2008. Subsequently, the town submitted the requested dashboard video on December 23, 2008, beyond the fifteen-day deadline for submitting this information.

Consequently, we conclude the town failed to comply with the requirements of section 552.301 of the Government Code with respect to the submitted dashboard video.

A governmental body's failure to comply with the 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 id.* § 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 section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Although you raise section 552.108 of the Government Code for the submitted dashboard video, this section is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). However, the interests of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision Nos. 586 (1991), 469 (1987). You represent that the Denton County District Attorney's Office (the "district attorney") asserts a law enforcement interest in the submitted dashboard video. Therefore, we will consider whether the town may withhold the submitted dashboard video on behalf of the district attorney under section 552.108. We will also consider your claims under section 552.108 for the timely submitted witness statement.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" *Id.* § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the submitted witness statement and dashboard video relate to a pending criminal prosecution by the district attorney. You also represent that the district attorney has informed you that release of the submitted information would interfere with the prosecution of the criminal case. Based upon your representations and our review, we find that section 552.108(a)(1) is applicable to the submitted information. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). The town may, therefore, withhold the submitted witness statement and dashboard video pursuant to section 552.108(a)(1) of the Government Code. We note that you have the discretion to release all or part of the submitted information that is not otherwise confidential by law. Gov't Code § 552.007.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 335383

Enc. Submitted documents

cc: Requestor
(w/o enclosures)