



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

~~September 2, 2009~~

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
1400 S. Lamar
Dallas, Texas 75215

OR2009-12421

Dear Ms. Middlebrooks:

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# 354237 (Dallas Police Department Request no. 09-4776).

The City of Dallas Police Department (the "department") received a series of requests for multiple specified reports. You claim that the responsive reports are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim.

Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples. *See Gov't Code § 552.301(e)(1)(D)*. The department has not submitted a copy of the specific information requested or representative samples of it. Thus, the department failed to comply with the procedural requirements mandated by section 552.301.

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 that generally does not overcome the presumption of openness. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to Gov't Code § 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the department has waived its claim under section 552.108. Although sections 552.101 and 552.130 of the Government Code can provide compelling reasons for nondisclosure of information under section 552.302, we have no basis for concluding that the requested information is excepted under these sections because you failed to submit any portion of it for our review. Accordingly, we have no choice but to order you to release the requested reports. If you believe this information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 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 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, toll free, at (888) 672-6787.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 354237

Enc. Submitted documents

cc: Requestor
(w/o enclosures)