



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 24, 2009

Ms. Luz E Sandoval-Walker  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza 9th Floor  
El Paso Texas 79901

OR2009-13458

Dear Ms. Sandoval-Walker:

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# 356635.

The El Paso Police Department (the "department") received two requests for information pertaining to a specified incident. The first request seeks copies of 9-1-1 calls and video recordings related to the incident and the second request seeks all video recordings related to the incident. You claim 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 note one of the submitted video recordings is not responsive to the instant request for information because it does not pertain to the specified accident. The department need not release non-responsive information in response to this request, and this ruling will not address that information.

As you acknowledge, the department did not comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). The submitted information is therefore presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *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); *see also* Open Records Decision No. 630 (1994). The statutory presumption of openness can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You claim an exception to disclosure under section 552.108 of the Government Code, which is discretionary and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). However, the need of a governmental body, other than the agency that is seeking an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason to withhold information from disclosure. Open Records Decision Nos. 630 at 3, 586 at 3 (1991) (need of another governmental body to withhold information under predecessor to section 552.108 can provide compelling reason under section 552.302). In acknowledging your failure to comply with section 552.301, you state that a third party's interests provide a compelling reason to withhold the submitted information from disclosure. However, the "third party" you mention is the department, which is the law enforcement entity that initially received the request and subsequently failed to comply with section 552.301(b). Thus, the department's own interests cannot provide a compelling reason to overcome the presumption of openness. Therefore, the department may not withhold any of the submitted information under section 552.108. However, we will consider whether section 552.130 of the Government Code provide a compelling reason to withhold any portion of the submitted information despite the department's procedural violation.<sup>1</sup>

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(2). We note the submitted videos contain Texas license plate numbers. Accordingly, the department must withhold the Texas license plate numbers under section 552.130 of the Government Code. As you raise no further exceptions against disclosure, the department must release the remainder of the submitted information.

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.

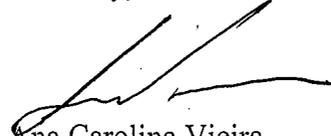
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free,

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 356635

Enc. Submitted documents

c: Requestor (2)  
(w/o enclosures)