



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 7, 2010

Ms. Yvonne Rodriguez
Telecommunications Supervisor
Yoakum Police Department
P.O. Box 738
Yoakum, Texas 77995

OR2010-00304

Dear Ms. Rodriguez:

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# 366463.

The Yoakum Police Department (the "department") received a request for a specified offense report, complete with the witness's, victim's, and suspect's statements, and supplemental reports. You have submitted a letter requesting a ruling from this office.

Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See Gov't Code § 552.301(b)*. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov't Code § 552.301(e)*. In your letter requesting a ruling from this office, you did not state the exceptions that apply. Furthermore, as of the date of this letter, you have not submitted to this office written comments explaining how any

exceptions apply to the requested information, a copy of the written request for information, a signed statement or sufficient evidence showing the date the department received the written request, or a copy or representative sample of the requested information for our review. Thus, we find the department failed to comply with the requirements of section 552.301.

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 the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.— Amarillo 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, 381-82 (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 of the Government Code); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Based on your letter requesting a ruling, we understand you may be asserting section 552.101 of the Government Code, which is a mandatory exception to disclosure that may not be waived. You have not, however, submitted any information for our review. Therefore, we have no basis for finding any information confidential. Thus, we have no choice but to order the department to release the requested information. If you believe the requested 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.¹

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

¹You represent you received the present request from the Crime Victims' Compensation Division of the Office of the Attorney General ("OAG"). Article 56.38(d) of the Code of Criminal Procedure provides that upon request of the OAG, and not later than the 14th business day after the date of the request, a law enforcement agency shall release all reports, including witness statements, to the OAG for purpose of determination of claimant or victim's qualification for compensation. *See* Crim. Proc. Code art. 56.38(d).

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 366463

Enc. Submitted documents

c: Requestor
(w/o enclosures)