



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 6, 2010

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

OR2010-15201

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# 396529 (DPD Public Information Request # 10-6858).

The Dallas Police Department (the "department") received a request for 9-1-1 calls pertaining to a specified incident. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

We must address the department's obligations under section 552.301 of the Government Code. Section 552.301 prescribes 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) states, within fifteen business days of receiving the request, the governmental body must submit to this office a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(D). The department states it received the request at issue on July 26, 2010. Accordingly, the fifteen-business-day deadline was

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<sup>1</sup>Although, you also initially raised all of the exceptions to disclosure under the Act, you have only provided arguments regarding the applicability of section 552.108. Since you have not submitted arguments concerning the remaining exceptions, we assume that you no longer urge them. See Gov't Code §§ 552.301(b), (e), .302

August 16, 2010. Your correspondence to this office enclosing the specific information you seek to withhold is postmarked August 17, 2010. Thus, we find the department did not submit the information required by section 552.301(e)(1)(D) to this office within the fifteen-business-day period prescribed by section 552.301(e). See Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail).

The information at issue 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; *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). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. Open Records Decision No. 150 (1977). Although you raise section 552.108 of the Government Code, 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). Therefore, the department may not withhold the submitted information under section 552.108 of the Government Code. As you make no further arguments against disclosure, the submitted 9-1-1 recordings must be released.

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, 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,



Laura Ream Lemus

Assistant Attorney General  
Open Records Division

LRL/eb

Ref: ID# 396529

Enc. Submitted documents

c: Requestor  
(w/o enclosures)