



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 26, 2011

Ms. S. McClellan  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2011-13883

Dear Ms. McClellan:

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# 431135 (DPD PIR No. 2011-5993).

The Dallas Police Department (the "department") received a request for a specified report. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.136 of the Government Code.

Section 552.301 of the Government Code prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(e) requires the governmental body to submit to this office, no later than the fifteenth business day after the date of its receipt of the request for information, the specific information at issue or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(D). You state the department received the instant request for information on July 11, 2011. As of the date of this decision, you have not submitted any information the department seeks to withhold. Thus, the department has not complied with section 552.301 of the Government Code in requesting this decision.

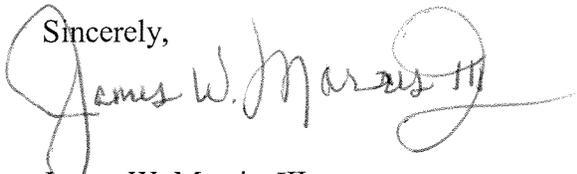
If a governmental body fails to comply with section 552.301, the requested information is presumed to be public and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). This statutory presumption 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). The department claims section 552.108 of the Government Code, which is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 at 1-2 (1991) (statutory predecessor to Gov't Code § 552.108 could be waived), 177 at 3 (1977) (same). Therefore, because the department's claim under section 552.108 of the Government Code is not a compelling reason for non-disclosure under section 552.302 of the Government Code, the department may not withhold any of the requested information under that exception. The department also claims sections 552.101, 552.117, and 552.136 of the Government Code, which are mandatory exceptions that can provide compelling reasons for non-disclosure under section 552.302. *See* Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions generally). But because the department has not submitted any of the requested information to this office, we have no basis to conclude any of the information is confidential under any mandatory exception. Thus, we have no choice but to order the department to release the requested information in accordance with section 552.302 of the Government Code. If you believe the 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](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,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 431135

c: Requestor