



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 26, 2011

Corporal Vicki Medley
Canton Police Department
24980 State Highway 64
Canton, Texas 75103

OR2011-13906

Dear Corporal Medley:

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# 431213.

The Canton Police Department (the "department") received a request for audio and video recordings, a specified sworn statement, and all press releases authorized by the department relating to the arrest of the requestor's client. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

We must address the department's procedural obligations under the Act. Section 552.301 of the Government Code describes the requirements placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information the governmental

body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). You state the department received the request for information on June 17, 2011. This office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the ten-business-day deadline for requesting a ruling from this office was July 1, 2011, and the fifteen-business-day deadline was July 11, 2011. You did not request a ruling from this office until July 22, 2011. *See id.* § 552.308 (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Furthermore, as of the date of this letter, you have not submitted to this office a copy or representative sample of the information requested. Consequently, we find the department has failed to comply with the requirements of subsections 552.301(b) and (e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *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. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). 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). As such, it does not constitute a compelling reason to withhold information. Therefore, the department may not withhold the requested information under section 552.108 of the Government Code. As you raise no other exception to disclosure, the department must release the requested information in its entirety.

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,

A handwritten signature in black ink, appearing to read "Mack T. Harrison". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping underline.

Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 431213

c: Requestor