



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 15, 2012

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

OR2012-02357

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# 445653 (DPD PIR # 2011-10908).

The Dallas Police Department (the "department") received a request for the investigative file, prosecution report, any internal affairs file, and other information concerning a specified incident. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the claimed exceptions.

First, you state the requested police and offense reports were the subject of a previous request, in response to which this office issued Open Records Letter No. 2011-03569 (2011). In that ruling, we held that the department could withhold the information marked under section 552.108(a)(1) of the Government Code and must release the remaining information. As we have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling was based, we conclude the department must rely on Open Records Letter No. 2011-03569 as a previous determination and withhold or release the police and offense reports in accordance with it. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same

governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we note the remaining information sought in the instant request is not subject to our prior ruling. Thus, we will address whether this information must be released under the Act.

Next, we must address the department's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), within fifteen business days of receipt of the request the governmental body must submit to this office, among other items, 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 this instance, you state the department received the request for information on November 23, 2011. You inform us the department was closed on November 24 and 25, 2011. Accordingly, the fifteen-business-day deadline was December 16, 2011. However, as of the date of this ruling, this office has not received a copy or representative sample of the remaining information sought by the requestor. Consequently, we find the department failed to comply with section 552.301 of the Government Code.

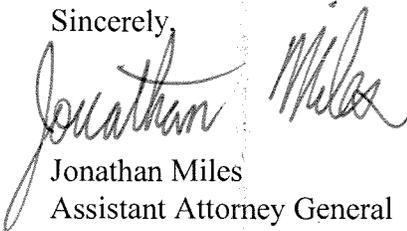
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless the governmental body overcomes the presumption by demonstrating a compelling reason to withhold the information. *See* Gov't Code § 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) (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). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because the department has failed to comply with the requirements of the Act, the department has waived its argument under section 552.108 of the Government Code, which is a discretionary exception that does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Furthermore, because you have not submitted the remaining requested information to this office for our review, we have no basis for finding it confidential under section 552.101, 552.130, or 552.136. Thus, we have no choice but to order you to release the remaining 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.

In summary, to the extent the requested information was the subject of Open Records Letter No. 2011-03569, the department must withhold or release that information in accordance with our prior ruling. The remaining requested information must be released to the requestor.

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 cursive script, appearing to read "Jonathan Miles".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/agn

Ref: ID # 445653

Enc. Submitted documents

c: Requestor
(w/o enclosures)