



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 31, 2012

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

OR2012-08352

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# 459137 (PIR 2012-04829).

The Dallas Police Department (the "department") received a request for the arrest warrant and probable cause affidavit supporting the arrest of a named individual. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.

Initially, we note the requestor only seeks the arrest warrant and probable cause affidavit related to the specified arrest. Thus, the submitted incident report, which we have marked, is not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request. Further, although you state the department submitted a representative sample of the requested information, the submitted information consists only of the related incident report. Thus, we find the submitted information is not representative of the requested the arrest warrant and probable cause affidavit. Accordingly, we must address the department's procedural obligations.

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) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). You state the department received the request for information on April 24, 2012. Accordingly, the department's ten-business-day deadline was May 8, 2012. However, the envelope in which you submitted your request for a decision from this office bears a meter-mark of May 9, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Pursuant to section 552.301(e) of the Government Code, among other items, a governmental body is required to submit to this office within fifteen business days of receiving the request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). As noted, as of the date of this letter, you have not submitted for our review a copy or representative sample of the information requested. Consequently, 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 the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason 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, 381-81 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). Although you raise section 552.108 of the Government Code, this 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), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the department's claim under section 552.108 is not a compelling reason to overcome the presumption of openness. Therefore, the department may not withhold any of the requested information under section 552.108. Thus, we have no choice but to order the department to release the requested information to the requestor pursuant to section 552.302 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,

A handwritten signature in cursive script that reads "Paige Lay".

Paige Lay  
Assistant Attorney General  
Open Records Division

PL/som

Ref: ID# 459137

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)