



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

July 5, 2012

Ms. Cheryl Elliot Thornton  
Assistant County Attorney  
Harris County  
1019 Congress Street, 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2012-10325

Dear Ms. Thornton:

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# 457919 (C.A. File No. 12PIA0206).

The Harris County Fire Marshall's Office (the "fire marshal's office") received a request for all records, transcripts, audio recordings, and dispatch records pertaining to a specified address and two named individuals.<sup>1</sup> You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim.

We must address the fire marshal's office's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed

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<sup>1</sup>As you have not submitted a copy of the written request for information, we take our description from your brief.

statement or sufficient evidence showing the date the governmental body received the written request, and (4) 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). As of the date of this letter, you have not submitted to this office arguments stating why any claimed exceptions apply to the information at issue, a copy of the written request for information, or a copy or representative sample of the information requested. Accordingly, we conclude the fire marshall's office 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 submit to this office the information required in section 552.301(e) results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Section 552.108 of the Government Code is a discretionary exception to disclosure that may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 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). In failing to comply with the procedural requirements of section 552.301, the fire marshall's office has waived its claim under section 552.108 and may not withhold any of the requested information on that basis. Although you also raise section 552.101 of the Government Code, which is a mandatory exception to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information confidential by law. Thus, we have no choice but to order the requested information released pursuant to 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. *See* Gov't Code § 552.324.

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 black ink, appearing to read "Ben B", with a long horizontal flourish extending to the right.

**Benjamin A. Bellomy**  
Assistant Attorney General  
Open Records Division

BAB/dls

Ref: ID# 457919

No enclosures

c: Requestor