ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2012

Mr. William Schultz
Assistant District Attorney
Civil Division
Denton County Criminal District Attorney's Office
P.O. Box 2850
Denton, Texas 76202

OR2012-12228

Dear Mr. Schultz:

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# 461722.

The Denton County Criminal District Attorney's Office (the "district attorney's office") received a request for audio and written records from December 2011 to present at a specified address.[1] You claim the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.130, and 552.147 of the Government Code. We have considered the claimed exceptions.

We must address the district attorney's office'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) of the Government Code, the governmental body is required to submit to this office within fifteen-business-days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the

[1]As you did not submit a copy of the written request for information, we take our description from your brief.

information to be withheld, (2) a copy of the written request for information, (3) a signed 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 this date, you have not submitted for our review 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. Consequently, we find the district attorney'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 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 district attorney's office has failed to comply with the requirements of the Act, the district attorney's office has waived all its claimed discretionary exceptions to disclosure. *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). Furthermore, because you have not submitted the requested information to this office for our review, we have no basis for finding it confidential under any mandatory exceptions. Thus, we have no choice but to order you to release the responsive 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, 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,

Sean Opperman

Sean Opperman
Assistant Attorney General
Open Records Division

SO/som

Ref: ID# 461722

Enc. Submitted documents

c: Requestor
(w/o enclosures)