



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2012

Ms. Teresa Brown
Sr. Open Records Assistant
Plano Police Department
P.O. Box 860358
Plano, Texas 75086

OR2012-13131

Dear Ms. Brown:

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# 467048 (SLOD071012).

The Plano Police Department (the "department") received a request for a specified incident report. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We must address the department's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires a governmental body to ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). You state the department received the request for information on July 10, 2012. Therefore, the department's ten-business-day deadline to request a ruling was July 24, 2012. The department did not submit its request for a ruling to this office until July 26, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents via first class United States mail, common or contract carrier, or interagency mail). Accordingly, the department did not request a decision from this office within the ten-business-day period prescribed by subsection 552.301(b).

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 No. 150 (1997). 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 submitted information under section 552.108 of the Government Code. As you raise no other exception to disclosure, the department must release the submitted information in its entirety to the requestor.¹

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

¹We note the information being released contains confidential information to which the requestor has a right of access. *See* Gov't Code § 552.023(a). If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

Ref: ID# 467048

Enc. Submitted documents

c: Requestor
(w/o enclosures)