

December 18, 2012

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

OR2012-20383

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# 478476 (DPD PIR No. 2012-14351).

The Dallas Police Department (the “department”) received a request for information related to a specified service number. You claim 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 information you submitted.¹

We note the department did not comply with its ten-business-day deadline under section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See Gov’t Code* § 552.301(a). Section 552.301(b) provides that a governmental body must ask for the attorney general’s decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.302 of the Government Code provides that if a governmental

¹This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See Gov’t Code* §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *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).

You inform us the department received the present request for information on November 13, 2012, and that your office was closed on November 22 and 23; therefore, the department's ten-business-day deadline under section 552.301(b) was November 29. The department requested this decision by United States mail meter-marked November 30. *See Gov't Code* § 552.308 (prescribing requirements for proof of compliance with *Gov't Code* § 552.301). Thus, the department did not comply with section 552.301 in requesting this decision, and the submitted information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See Open Records Decision Nos.* 630 at 3 (1994), 325 at 2 (1982). The department claims section 552.108 of the Government Code, which 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), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to *Gov't Code* § 552.108 subject to waiver). The department's claim under section 552.108 is not a compelling reason for non-disclosure under section 552.302. In failing to comply with section 552.301, the department waived section 552.108 of the Government Code and may not withhold any of the submitted information under that exception.

We note section 552.130 of the Government Code is applicable to some of the submitted information.² Section 552.130 excepts from disclosure information related to a motor vehicle title or registration issued by an agency of this state or another state or country. *See Gov't Code* § 552.130(a)(2). We have marked motor vehicle information the department must withhold under section 552.130 of the Government Code. The department must release the rest of the submitted information.

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.

²This office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See Gov't Code* §§ 552.007, .352; *Open Records Decision No.* 674 at 3 n.4 (2001) (mandatory exceptions).

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,

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 478476

Enc: Submitted documents

c: Requestor
(w/o enclosures)