



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 1, 2013

Ms. Pam Kaminsky  
Attorney  
Fort Bend Independent School District  
16431 Lexington Boulevard  
Sugar Land, Texas 77479

OR2013-13327

Dear Ms. Kaminsky:

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# 494963 (Fort Bend ISD ORR 2012-13-489).

The Fort Bend Independent School District (the "district") received a request for the video recording for a specified incident. 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 and reviewed the submitted information.

Initially, we note the requestor seeks only the video recording for the specified incident. You have only submitted a copy of the police report for the specified incident and state you seek to withhold the report and "related evidence [r]equested." You have not submitted the requested video recording. We find the submitted police report is not responsive to the present request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the district need not release such information in response to this request. Further, although we understand you to assert the submitted information is a representative sample of the requested information, we find the submitted police report is not representative of the requested video recording. Accordingly, we must address the district'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. Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See* Gov't Code § 552.301(e)(1). As previously discussed, you have submitted only a non-responsive police report, not the requested video recording. Accordingly, we find the district failed to comply with the requirements mandated by section 552.301(e).

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 information is public and must be released unless the governmental body overcomes this presumption by demonstrating a compelling reason to withhold the information. *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); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Although you raise section 552.108 of the Government Code, this section 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 in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to comply with section 552.301, the district has waived its argument under section 552.108, and may not withhold the requested video recording on that basis. Although you also raise section 552.101 of the Government Code, which can provide a compelling reason to withhold information, because you have not submitted the requested video recording for our review, we have no basis for finding the information excepted from disclosure or confidential by law. Thus, we have no choice but to order the requested video recording released to the requestor 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.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large, looped initial "L".

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/tch

Ref: ID# 494963

Enc. Submitted documents

c: Requestor  
(w/o enclosures)