



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 19, 2013

Ms. P. Armstrong  
Ms. S. McClellan  
Assistant City Attorneys  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2013-22196

Dear Ms. Armstrong and Ms. McClellan:

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# 513809 (ORR# 2013-13342 and DPD PIR No. 2013-13764).

The Dallas Police Department (the "department") received a request for a specified incident report. The department received a separate request for all information pertaining to a specified incident. 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 representative sample of information.<sup>1</sup>

We note that in response to the first request, the department only seeks to withhold portions of the incident report under section 552.108 of the Government Code. However, in response to the second request, the department seeks to withhold the entire incident report. The department's assertion of section 552.108 for the entire incident report, however, did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting a decision from this office regarding the first request for information. *See Gov't Code* § 552.301(b). When a governmental body fails to comply with the procedural

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

requirements of section 552.301, the information at issue is presumed public and must be released unless there is a compelling reason to withhold it. *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 may exist to withhold information when the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 150 at 2 (1977). Although the department asserts the information at issue is excepted under section 552.108 of the Government Code, this exception is discretionary in nature. It serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5, 663 at 5, 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to comply with section 552.301 in response to some of the information that is responsive to the first request, the department has waived its claims under section 552.108 for that information, and may not withhold any of that information on this basis in response to the first request. We note in waiving section 552.108 claims for the some of the information responsive to the first request, the department also waived this claim for this same information with respect to the second request for information. *See* Gov't Code § 552.007 (prohibiting selective disclosure of information); Open Records Decision No. 463 at 1-2 (1987). Accordingly, we will only consider the department's claim under section 552.108 for the information it marked in the incident report it submitted in responsive to the first request. We will also consider the department's claim under section 552.108 for the 9-1-1 call sheet submitted in response to the second request.

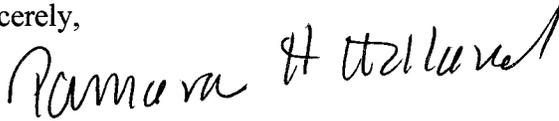
Section 552.108 of the Government Code, which excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You have marked the information in the incident report the department seeks to withhold under section 552.108. You state the marked information in the incident report and the submitted 9-1-1 call sheet relate to a pending criminal investigation. Based on your representation, we find release of the marked information in the incident report and the submitted 9-1-1 call sheet would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the department may withhold the marked information in the incident report and the submitted 9-1-1 call sheet under section 552.108(a)(1) of the Government Code. The department must release the remaining information in the incident report.

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 cursive script that reads "Tamara H. Holland".

Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/dls

Ref: ID# 513809

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)