



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 30, 2013

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

OR2013-22407

Dear Ms. Armstrong:

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# 510086 (DPD ORR# 2013-11621).

The Dallas Police Department (the "department") received a request for information pertaining to two specified incidents, including a specified accident. The department claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note the department has submitted information pertaining to one of the specified incidents, but not information pertaining to the specified accident. Although you state the department submitted a representative sample of the requested information, we find the submitted information is not representative of the other types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the type of information you have submitted for our review. This ruling does not authorize the department to withhold any information that is substantially different from the type of information you submitted to this office. *See* Gov't Code § 552.302. Accordingly, to the extent any information responsive to the remainder of the request for information existed in the possession of the department when it received the request, we assume the department has released this information to the requestor. *See* Open Records Decision No. 664 (2000) (if

governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If the department has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

We must next address the department's procedural obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is exempted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *Id.* § 552.301(b). Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the 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. *Id.* 552.301(e). The department received the request for information on September 27, 2013. Thus, the department's ten-business-day deadline under section 552.301(b) was October 11, 2013, and its fifteen-business-day deadline under section 552.301(e) was October 18, 2013. However, the envelope containing your request for a ruling and a copy of the information at issue is postmarked October 21, 2013. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Therefore, we conclude the department failed to comply with the procedural requirements mandated by section 552.301.

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 requested information is public and must be released unless the governmental body demonstrates a compelling reason 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 (Tex. App.—Austin 1990, no writ); *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). Section 552.101 of the Government Code can provide a compelling reason to overcome this presumption. Therefore, we will consider whether this section requires the department to withhold the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To

demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. The requestor knows the identity of the individual involved as well as the nature of the information in the submitted report. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must withhold the submitted report in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 510086

Enc. Submitted documents

c: Requestor  
(w/o enclosures)