



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2014

Ms. L. Carolyn Nivens
For the City of League City
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056

OR2014-22369

Dear Ms. Nivens:

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# 546376 (LCPD Ref. No. 3750).

The League City Police Department (the "department"), which you represent, received a request for three specified incident reports. You state the department will release some responsive information to the requestor. You claim the remaining requested 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.

Initially, we must address the department's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving a written request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. Gov't Code § 552.301(b). You state the department received the request for information on September 16, 2014. This office does not count the date the request was received or any dates the governmental body was closed as business days for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the department's ten-business-day deadline was September 30, 2014. We understand the envelope in which you originally submitted the information required by section 552.301(b) was returned for insufficient postage, and you again mailed the required information to this

office in October. Section 552.308 of the Government Code provides, when a submission within a specified time period is required under the Act, the time requirement is met if the submission is sent by first class mail “with postage . . . prepaid” and the postmark date is within the required time period. *See id.* § 552.308. Because the department did not submit the information required by section 552.301(b) within the required time period, we find the department failed to comply with the requirements of 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 information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *see also 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). 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). 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 department has waived its argument under section 552.108, and may not withhold any of the submitted information on this basis. As no further exceptions to disclosure are raised, the submitted information must be released.¹

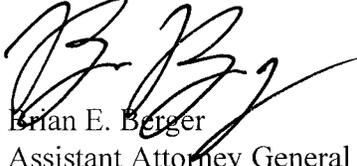
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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.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

¹We note the requestor has a special right of access to some of the information being released. *See* Gov’t Code § 552.023 (person or person’s representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, if the department should receive another request for this information from a different requestor, the department must again request an opinion from this office.

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, appearing to read 'B. Berger', is written over the typed name.

Brian E. Berger
Assistant Attorney General
Open Records Division

BB/ac

Ref: ID# 546376

Enc. Submitted documents

c: Requestor
(w/o enclosures)