



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 21, 2016

Ms. Megan Batchelder
Manager, Records Division
North Richland Hills Police Department
4301 City Point Drive
North Richland Hills, Texas 76180

OR2016-23726

Dear Ms. Batchelder:

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# 631797 (ORL# 16-743).

The North Richland Hills Police Department (the "department") received a request for information pertaining to any incidents in which a member of the department discharged his or her weapon during a specified time period, including the name of the officer(s) involved, when and where the incident took place, the offense report, the outcome of the grand jury review, and any disciplinary actions taken by the department. You state the department does not have information responsive to the portion of the request seeking information related to disciplinary action taken by the department. You claim the remaining requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim.

We must address the department's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body that receives a request for information it wishes to withhold under an exception to disclosure must submit to this office within fifteen business days of receiving the request (1) written comments stating the reasons

¹Although you do not explicitly raise section 552.101 of the Government Code, we understand you to raise this exception based on the substance of your argument.

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. Gov't Code § 552.301(e). The submitted information indicates the department received the instant request for information on August 5, 2016. As of this date, you have not submitted to this office a copy or representative sample of the information requested. Consequently, we conclude 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 requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Although you raise a mandatory exception to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure or confidential by law. Thus, we have no choice but to order the requested information released pursuant to section 552.302 of the Government Code. If you believe the information is confidential and may not be lawfully 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, 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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/akg

Ref: ID# 631797

c: Requestor