



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 2, 2009

Mr. Hyattye O. Simmons
General Counsel
Dallas Area Rapid Transit
P. O. Box 660163
Dallas, Texas 75266-0163

OR2009-12405

Dear Mr. Simmons:

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# 355673.

Dallas Area Rapid Transit ("DART") received a request for information related to a specified internal affairs investigation, the investigator's notes and log, disciplinary recommendations, case summaries, and tape recordings. You state that some responsive information has been released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the information you have submitted is not responsive to the instant request. In this instance, the requestor is seeking information pertaining to an internal affairs investigation. However, you have submitted information pertaining to the arrest and prosecution of an unrelated individual for failure to stop and render aid, and upon review, we find that the submitted information does not relate to the present request. Because the submitted information is not responsive to the request, we decline to issue a ruling with respect to this information.

Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Section 552.301(e) requires a

governmental body to submit to this office within fifteen business days of receiving the request (1) general 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. *See id.* § 552.301(e)(1)(A)-(D). In this instance, you have not submitted to this office any information responsive to the present request. Consequently, we find that DART failed to comply with the requirements of section 552.301.

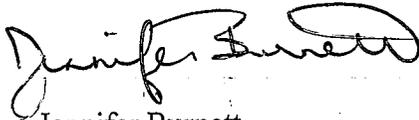
Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although you raise section 552.108 of the Government Code, this section is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). In failing to comply with the requirements of section 552.301, you have waived your claim under section 552.108. While section 552.130 of the Government Code can provide a compelling reason for nondisclosure of information under section 552.302, because you have not submitted any of the responsive information for our review, we have no basis for concluding that any portion of the requested information is confidential by law. Therefore, we have no choice but to order you to release the requested information in its entirety in accordance with 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Burnett", written in a cursive style.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/eeg

Ref: ID# 355673

Enc. Submitted documents

c: Requestor
(w/o enclosures)