



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2009

Mr. Michael B. Halla
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2009-13537

Dear Mr. Halla:

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# 356419.

The City of Lancaster (the "city"), which you represent, received a request for all reports and records, to include audio and video recordings, related to the stop, arrest, and incarceration of a named individual. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have redacted a date of birth from the submitted information. You do not assert, nor do our review of our records indicate, that you have been authorized to withhold the redacted information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision 673 (2000). Because we can discern the nature of the information that has been redacted, being deprived of this information does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested" or representative sample), .302.

Next, we must address the city's obligations under section 552.301 of the Government Code. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted 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. *See id.* § 552.301(a), (b). Within fifteen days of receiving the request, the governmental body must submit to this office (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. *Id.* § 552.301(e)(1)(A)-(D). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

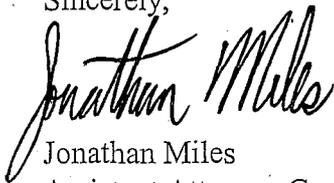
You state that the request was received by the city on June 22, 2009. However, the city did not request a ruling from this office or submit the required information until July 20, 2009. Consequently, the city failed to comply with section 552.301 of the Government Code in requesting a decision from our office with respect to the requested information. *See Gov't Code* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Therefore, the submitted information is presumed to be public under section 552.302. 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 seek to withhold the submitted information under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See Gov't Code* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (Gov't Code § 552.103 may be waived); *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 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Because your claims under sections 552.103 and 552.108 do not provide compelling reasons for non-disclosure under section 552.302, in failing to comply with section 552.301 you have waived those exceptions. Accordingly, the city may not withhold any of the submitted information on the basis of your claims under sections 552.103 and 552.108. As you raise no further exceptions, the submitted information must be released.¹

¹ The requestor, as an attorney for the individual whose information is at issue, has a special right of access to some of the information being released in this instance. *See Gov't Code* § 552.023(a). Because such information may be confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 356419

Enc. Submitted documents

c: Requestor
(w/o enclosures)