



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 25, 2009

Ms. Stephanie Berry  
Assistant City Attorney  
City of Denton  
215 East McKinney  
Denton, Texas 76201

OR2009-13559

Dear Ms. Berry:

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# 356481.

The Denton Police Department (the "department") received a request for information pertaining to a specified incident, including videos of all interviews. You state that the incident report has been made available to the requestor. You claim that the submitted information, which consists of dash cam videos and photographs, is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department'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. Section 552.301(e) states, within fifteen business days of receiving the request, the governmental body must submit to this office 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)(1)(D). The department states it received the request at issue on July 8, 2009. Accordingly, the fifteen-business-day deadline was July 29, 2009. Although your correspondence to this office enclosing the specific

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<sup>1</sup>We note that the department initially raised section 552.101 of the Government Code but has since withdrawn its claim under that section. Accordingly, we do not address section 552.101.

information you seek to withhold is dated July 29, 2009, it is postmarked July 30, 2009. Thus, we find the department did not submit the information required by section 552.301(e)(1)(D) to this office within the fifteen-business-day period prescribed by section 552.301(e). *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail).

The information at issue is therefore 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; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *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). 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, 325 at 2 (1982). Although you raise sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions that protect a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); 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). However, the interests of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision Nos. 586 (1991), 469 (1987). The Denton County Criminal District Attorney's Office (the "district attorney") states that it has an interest in the submitted information, which pertains to a pending criminal prosecution. Therefore, we will consider whether the department may withhold the submitted information on behalf of the district attorney based on the district attorney's claims under sections 552.103 and 552.108 of the Government Code.

Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The district attorney states that the submitted information is related to a pending criminal prosecution and has asked that the submitted information be withheld from disclosure as the release of the marked information will interfere with the prosecution of this case. Based upon the district attorney's representations and our review, we find that section 552.108(a)(1) is applicable to the submitted information. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active

cases). Accordingly, the department may withhold the submitted information on behalf of the district attorney pursuant to section 552.108(a)(1) of the Government Code.<sup>2</sup>

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](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,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/jb

Ref: ID# 356481

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address the district attorney's remaining argument against the disclosure of the submitted information.