



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 10, 2011

Ms. S. McClellan  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2011-02091

Dear Ms. McClellan:

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# 408814 (DPD Request Number 2010-10597).

The Dallas Police Department (the "department") received a request for the report pertaining to case number 288291X, involving the death of the requestor's brother. You claim the responsive information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, 552.1175, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim.

We must address the department's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, the governmental body is required 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* Gov't Code § 552.301(e). As of the date of this letter, you have not submitted to this office comments explaining why the stated exceptions apply, nor have you submitted a copy or representative sample of the information

requested. Consequently, 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 submit to this office the information required in section 552.301(e) results in the legal presumption the requested 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 id.* § 552.302; *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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Because you failed to comply with the requirements of the Act, the department has waived all of its claimed discretionary exceptions to disclosure. *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. 676 at 12 (2002) (attorney-client privilege under section 552.107 constitutes compelling reason to withhold information under section 552.302 only if information's release would harm third party), 665 at 2 n.5 (2000) (untimely request for decision results in waiver of discretionary exceptions), 663 at 5 (1999) (governmental body may waive section 552.111), 470 (1987) (statutory predecessor to section 552.111 is discretionary exception), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). The department also raises sections 552.101, 552.1175, 552.130, 552.136, and 552.137 of the Government Code, which are mandatory exceptions to disclosure. However, because you have not submitted the requested information for our review, we have no basis for finding any of the information confidential by law. We therefore conclude the department must release the requested information to the requestor pursuant to section 552.302. 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](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 'Bob Davis', with a large, stylized flourish at the end.

Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/em

Ref: ID# 408814

c: Requestor