



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 4, 2013

Ms. Delietrice Henry
Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2013-00172

Dear Ms. Henry:

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# 475595 (ORR No. SARJ100512).

The Plano Police Department (the "department") received a request for (1) calls for service reports pertaining to a specified address during two specified periods of time and (2) a specified theft report. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we must address the department's procedural obligations under the Act. 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. Gov't Code § 552.301(b). You state the request for information was received on October 5, 2012. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. You do not inform us the department was closed for business between October 6, 2012 and October 19, 2012. Accordingly, the department's ten-business-day deadline to request a ruling was October 19, 2012. However, the envelope in which you requested a ruling has two meter marks: the first is dated October 17, 2012, and the second is dated October 23, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Because of this

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

conflicting information, we are unable to determine whether the department requested a ruling from this office within ten business days of receiving the request for information. *See id.* § 552.301(b). Therefore, we find the department has failed to establish it complied with the procedural requirements of section 552.301 in requesting a ruling from this office. *See id.*

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and 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); Open Records Decision No. 630 (1994). Generally, 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). We note section 552.108 of the Government Code is discretionary in nature. This exception serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, none of the submitted information may be withheld under section 552.108. As no additional exceptions to disclosure have been argued, the submitted information must be released.

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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 475595

Enc. Submitted documents

c: Requestor
(w/o enclosures)