



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 10, 2014

Mr. Jim Gibson
Interim Assistant General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2014-04094

Dear Mr. Gibson:

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# 515700 (DART ORR# 10399).

Dallas Area Rapid Transit ("DART") received a request for a specified incident report related to the requestor. You state you have released basic information. You claim the remaining information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address DART's obligations under section 552.301 of the Government Code, which prescribes the 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(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the written request for information. Gov't Code § 552.301(e)(1)(B). You state DART received the request for information on December 9, 2013. 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. Thus, DART's fifteen-business-day deadline to submit a copy of the written request was January 6, 2014. However, DART did not submit a copy of the written request until January 8, 2014. *See id.* § 552.308 (prescribing requirements for timeliness of request for ruling submitted by United States mail). Thus, DART failed to comply with the procedural requirements mandated by section 552.301.

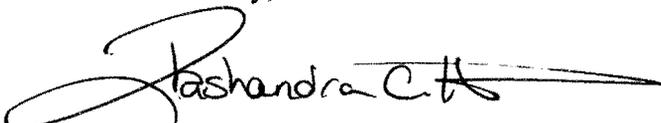
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body overcomes

this presumption by demonstrating a compelling reason to withhold the information. *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); Open Records Decision No. 630 (1994). A compelling reason generally exists 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 section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision No. 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Thus, in failing to comply with section 552.301, DART has waived its arguments under section 552.108. As you raise no further exceptions to disclosure, the submitted information must be released.¹

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rashandra C. Hayes
Assistant Attorney General
Open Records Division

RCH/dls

¹We note the requestor has a special right of access under section 552.023 of the Government Code to some of the information being released in this instance. *See* Gov't Code § 552.023(b)(governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4.(1987). Therefore, if DART receives another request for this information from a different requestor, DART must again seek a ruling from this office.

Ref: ID# 515700

Enc. Submitted documents

c: Requestor
(w/o enclosures)