



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2014

Mr. A. Feliz Abalos
Senior Assistant City Attorney
City of Odessa
P.O. Box 4398
Odessa, Texas 79760-4398

OR2014-06323

Dear Mr. Abalos:

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# 519888.

The Odessa Police Department (the "department") received a request for records of any and all complaints made to the department concerning a named officer, the named officer's disciplinary file, and a dispatch transcript. You state you have released some of the information to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.117, and 552.130 of the Government Code. We have considered the claimed exceptions.

We must address the department's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) 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). You inform us the department received the request on January 27, 2014. However, as of the date of this letter, you have not submitted for our review the comments explaining why the stated exceptions apply, or a copy or representative sample of the remaining information requested. Consequently, we find the department failed to comply with the requirements of section 552.301.

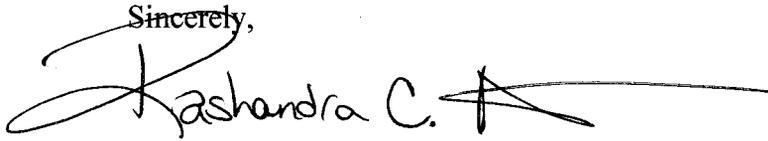
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Although the department seeks to withhold the information under sections 552.108 and 552.111 of the Government Code for these exceptions are discretionary in nature. They serve to protect a governmental body's interests and may be waived; as such, they do not constitute compelling reasons to withhold information. *See* Open Records Decision No. 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process), 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, no portion of the requested information may be withheld under section 552.108 or section 552.111 of the Government Code. Furthermore, because you have not submitted the requested information to this office for our review, we have no basis for finding it confidential under any mandatory exceptions. Thus, we have no choice but to order you to release the requested information in accordance with section 552.302 of the Government Code. 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.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,

A handwritten signature in black ink that reads "Rashandra C. Hayes". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Rashandra C. Hayes
Assistant Attorney General
Open Records Division

RCH/dls

Ref: ID# 519888

c: Requestor