



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 23, 2014

Ms. Amy L. Jansson
Records Division
Dumas Police Department
124 East Seventh Street
Dumas, Texas 79029

OR2014-12746

Dear Ms. Jansson:

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# 530230.

The Dumas Police Department (the "department") received a request for twenty-five categories of information regarding a specified accident. You state you released some information, including a copy of the Texas Peace Officer's Crash Report Form CR-3, to the requestor. *See* Transp. Code § 550.065(c)(4) (governmental body must release accident report to person who provides two of following three items of information: (1) date of accident; (2) name of any person involved in accident; and (3) specific location of accident). You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim.

We must address the department's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed 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. *Id.* § 552.301(e). You state the department received the request for information on April 28, 2014. You state the department sought clarification of the request on April 28, 2014 and received clarification from the requestor on May 5, 2014. *See id.* § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). Accordingly, the department's deadline for submitting the information required by section 552.301(e) was May 27, 2014. As of this date, you have not submitted to this office a copy or representative sample of the information requested. Accordingly, we conclude 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 comply with the procedural requirements of section 552.301 results in the legal presumption that 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 Gov't Code* § 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 (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. You assert the requested information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 is a discretionary exception to disclosure and may be waived. *See Gov't Code* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). In failing to comply with the requirements of section 552.301, you have waived the department's claims under section 552.108. Accordingly, the department may not withhold the requested information under section 552.108. Thus, we have no choice but to order the requested information released 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.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 "Kristi L. Godden". The signature is written in a cursive style with a large initial "K".

Kristi L. Godden
Assistant Attorney General
Open Records Division

KLK/tch

Ref: ID# 530230

c: Requestor