



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 21, 2014

Ms. Sherri West  
Custodian of Records  
Port Aransas Police Department  
705 West Avenue A  
Port Aransas, Texas 78373

OR2014-14723

Dear Ms. West:

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# 533683.

The Port Aransas Police Department (the "department") received a request for video and audio recordings pertaining to a specified arrest, and a second request from the same requestor for the related offense report. The department states it is making some of the requested information available to the requestor, but claims the submitted information is excepted from disclosure under sections 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we must address the department's procedural 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 (1) written comments

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<sup>1</sup>We 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 that submitted to this office.

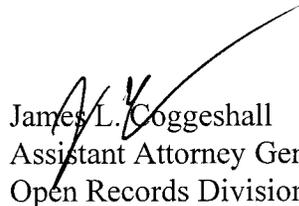
stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You do not inform us when the department received the request for information. Nevertheless, the copy of the request you submitted is dated and stamped as having been received by the Port Aransas City Secretary on June 2, 2014, and you do not inform us the department was closed for business on any of the days at issue. *See id.* § 552.301(e)(1)(C). Thus, the department's fifteen-business-day deadline under section 552.301(e) was June 23, 2014. However, the envelope containing the copy of the specific information requested is postmarked June 25, 2014, and you have not otherwise established the department deposited it in the mail or with a common or contract carrier before that date. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Therefore, we conclude the department 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 requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests. *See* Open Records Decision Nos. 665 at 5 (2000) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). *But see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). Thus, the department's claim under section 552.108 is not a compelling reason to overcome the presumption of openness. You have also not provided this office with a representation from a prosecutor or any other law enforcement entity that it wants the information withheld under section 552.108. Further, we have not received any comments from the family of the deceased individual whose information is at issue objecting to the release of the submitted information. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released); *see also Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157 (2004) (surviving family members can have privacy interest in information relating to deceased relatives). Therefore, the department must release the submitted information to the requestor.

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](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/eb

Ref: ID# 533683

Enc. Submitted documents

c: Requestor  
(w/o enclosures)