



January 14, 2015

Ms. Christine P. Dykes
Support Services Manager
Seagoville Police Department
600 North US Highway 175
Seagoville, Texas 75159

OR2015-00764

Dear Ms. Dykes:

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# 550455.

The Seagoville Police Department (the "department") received a request for all pictures, documents and records pertaining to a specified citation.¹ You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving a written request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See* Gov't Code § 552.301(b). 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 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

¹As you have not submitted a copy of the request for information for our review, we take our description from your brief to our office.

representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). In this instance, you state the department received the request for information on October 10, 2014. Thus, the department's ten-business-day and fifteen-business-day deadlines were October 24, 2014, and October 31, 2014, respectively. However, the envelope in which you submitted the information required under section 552.301(b) and a portion of the information required under section 552.301(e) bears a post meter mark of November 3, 2014. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Further, as of the date of this letter, you have not submitted for our review a copy of the written request for information. Consequently, we find the department failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists 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, 381-82 (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); *see also* 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). Although you assert the submitted information is excepted under section 552.103 of the Government Code, this section is discretionary in nature. It 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 Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, the submitted information may not be withheld under section 552.103 of the Government Code. Accordingly, we have no choice but to order you to release the submitted information in accordance with section 552.302 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 "Abigail T. Adams". The signature is written in a cursive, flowing style.

Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/ac

Ref: ID# 550455

Enc. Submitted documents

c: Requestor
(w/o enclosures)