



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 14, 2015

Ms. Allison Bastian  
Assistant City Attorney  
City of Brownsville  
1001 East Elizabeth Street, Suite 234  
Brownsville, Texas 78520

OR2015-09377

Dear Ms. Bastian:

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# 563669.

The Brownsville Police Department (the "department") received a request for information pertaining to the arrest of the requestor's client.<sup>1</sup> You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We must address the department's procedural obligations under the Act. 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) general 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

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<sup>1</sup>As you have not submitted a copy of the request for information, we take our description from your brief.

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 February 24, 2015. However, as of the date of this letter, while you have submitted to this office an e-mail containing the requestor's contact information, this e-mail does not include the written request for information. Consequently, we find that because the department did not submit the written request for information, the department failed to comply with the procedural requirements of section 552.301.

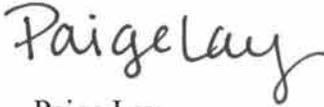
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. See *id.* § 552.302; *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). Sections 552.103, 552.108, and 552.111 are discretionary exceptions to disclosure and may be waived. 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 section 552.103); Open Records Decision Nos. 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Because the department has failed to comply with the procedural requirements of the Act, the department has waived sections 552.103, 552.108, and 552.111. See Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). As no other exceptions to disclosure have been raised, the department must release the submitted information.

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,

A handwritten signature in cursive script that reads "Paige Lay".

Paige Lay  
Assistant Attorney General  
Open Records Division

PL/bhf

Ref: ID# 563669

Enc. Submitted documents

c: Requestor  
(w/o enclosures)