



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 18, 2015

Ms. Evelyn Kimeu  
Staff Attorney  
Houston Police Department  
1200 Travis  
Houston, Texas 77002-6000

OR2015-17146

Dear Ms. Kimeu:

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# 575838 (Houston OR No. 15-3771).

The Houston Emergency Center (the "HEC") received a request for information pertaining to two 9-1-1 calls made from a specified address.<sup>1</sup> You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the HEC'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 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. *Id.*

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<sup>1</sup>Although you state the request was received by the Houston Police Department, we note the request was sent by e-mail to the HEC Open Records Department.

§ 552.301(e). In this instance, you state the HEC received the request for information on May 27, 2015. Accordingly, the HEC's fifteen-day-business deadline was June 17, 2015. In your letter mailed to our office on June 17, 2015, you seek to withhold "Exhibit 2" from disclosure. However, the HEC did not submit an "Exhibit 2" in that letter or in any subsequent mailing.<sup>2</sup> Thus, as of the date of this letter, you have not submitted for our review a copy or representative sample of the information requested. Consequently, we find the HEC failed to comply with the requirements of 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 requested information is excepted under section 552.108 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* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the requested information may not be withheld under section 552.108 of the Government Code. Accordingly, we have no choice but to order you to release the requested 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](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

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<sup>2</sup>Although you did submit an "Exhibit 3" in your June 17, 2015 letter, you state Exhibit 3, a police report, was submitted for informational purposes only and is not responsive to the request. This ruling does not address the public availability of non-responsive information, and the HEC is not required to release non-responsive information in response to this request.

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 "Abigail T. Adams".

Abigail T. Adams  
Assistant Attorney General  
Open Records Division

ATA/akg

Ref: ID# 575838

Enc. Submitted documents

c: Requestor  
(w/o enclosures)