



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 3, 2016

Ms. Elizabeth Lutton  
Legal Advisor  
County of Dallas  
133 North Riverfront Boulevard, LB-31  
Dallas, Texas 75207-4313

OR2016-02578

Dear Ms. Lutton:

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# 596743.

The Dallas County Sheriff's Department (the "sheriff's department") received a request for certain information pertaining to a specified accident. You claim the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim.

We must address the sheriff's department's obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. 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. Gov't Code § 552.301(e). You state the sheriff's department received the request for information on November 6, 2015. As of the date of this letter, you have not submitted for our review a copy or representative sample of the information requested. Accordingly, we find the sheriff's 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. Open Records Decision No. 150 at 2 (1977). Although you assert the requested information is excepted under sections 552.103 and 552.108 of the Government Code, these 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. 177 (1977) (governmental body may waive statutory predecessor to section 552.108), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 665 at 2 n.5 (2000) (discretionary exceptions generally). Because the sheriff's department has failed to comply with the procedural requirements of the Act, the sheriff's department has waived sections 552.103 and 552.108. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Thus, the requested information may not be withheld under section 552.103 or section 552.108 of the Government Code. Furthermore, because you have not submitted a copy or representative sample of the information requested to this office for our review, we have no basis for finding the requested information is otherwise confidential by law. Consequently, we have no choice but to order the requested information released pursuant to 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/som

Ref: ID# 596743

c: Requestor