



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 12, 2014

Ms. Brandi M. Youngkin
Assistant City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2014-14014

Dear Ms. Youngkin:

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# 532455.

The City of Plano (the "city") received two requests for call sheets and audio associated with a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state you released an audio recording in response to the first request for information, but you now seek to withhold portions of that audio recording from the second requestor under the informer's privilege and section 552.108 of the Government Code. The Act does not permit the selective disclosure of information. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). You seek to withhold portions of the submitted information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Because


the purpose of the common-law informer's privilege is to protect the flow of information to a governmental body, rather than to protect a third person, the informer's privilege, unlike other claims under section 552.101, may be waived. *See* Open Records Decision No. 549 at 6 (1990). Further, you also raise section 552.108, which may be waived. *See* Open Records Decision No. 586 (1991) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Consequently, the common-law informer's privilege and section 552.108 do not prohibit the release of information or make information confidential. Thus, the city may not now withhold from the second requestor the audio recording you released in response to the first request under section 552.108 or section 552.101 in conjunction with the common-law informer's privilege. As you raise no further exceptions to disclosure for this information, it must be released to the second requestor at this time.

Next, you acknowledge, and we agree, the city did not comply with its deadlines under section 552.301 of the Government Code in requesting this decision with respect to the remaining information responsive to both requests for information. Gov't Code § 552.301(b), (e). 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 information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *see also 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). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). As discussed above, although you assert portions of the remaining information are protected under section 552.108 of the Government Code and the common-law informer's privilege, these exceptions are discretionary and may be waived. *See* Gov't Code, § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000), 663 at 5 (1999), 549 at 6 (1990), 177 at 3 (1997). Thus, in failing to comply with section 552.301 with respect to the remaining information in response to the first request, the city waived its claims under section 552.108 and the informer's privilege for this information in regard to the second request, as well. Accordingly, the city may not withhold any of the remaining information under section 552.101 in conjunction with the common-law informer's privilege or under section 552.108 of the Government Code. As you raise no further exceptions to disclosure, the remaining information must be released to both requestors.

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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 532455

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)