



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 28, 2017

Ms. Cary Grace
Assistant City Attorney
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767

OR2017-14425

Dear Ms. Grace:

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# 663838 (ORR# 04-07290).

The Austin Police Department (the "department") received a request for video recordings associated with a specified incident. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered the raised arguments and reviewed the submitted information.

Initially, we must address the procedural obligations of the department under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Further, 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 representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e).

In this instance, you inform us the department received the requestor's initial request for the responsive information on March 31, 2017. You state you responded to the requestor within five business days in accordance with the previous determination this office granted the department in Open Records Letter No. 2016-10001 (2016). Open Records Letter No. 2016-10001 authorizes the department to withhold certain information from a requestor under section 552.108(a)(1) of the Government Code in specified circumstances without the necessity of first requesting a ruling from this office. We note, however, that previous determination states "the department may not rely on [Open Records Letter No. 2016-10001] in response to requests in which basic information is not responsive. For example, no basic information is at issue in a request for only a dashboard camera video recording or 9-1-1 call audio recording. Thus, the department may not rely upon this previous determination in response to those types of requests." Because the initial request sought only video recordings associated with a specified incident, no basic information was at issue in that request, and the department was not authorized to rely upon Open Records Letter No. 2016-10001 to withhold the information from the requestor under section 552.108 of the Government Code. Accordingly, the department was required to provide the information required by sections 552.301(b) and 552.301(e) within ten and fifteen business days of the initial request, respectively. Consequently, the department was required to provide the information required by section 552.301(b) by April 14, 2017, and the information required by section 552.301(e) by April 21, 2017. However, the envelope in which the department sent the information required by section 552.301(b) was postmarked April 20, 2017 and the envelope in which the department sent the information required by section 552.301(e) was postmarked April 25, 2017. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code in this case.

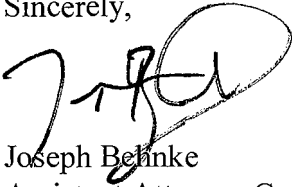
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason 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 (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 Nos. 319 (1982), 586 (1991), 630 (1994). Although the department claims section 552.108 of the Government Code for the submitted information, we find you have not established a compelling reason to address this exception. Consequently, the department

may not withhold any portion of the information at issue under section 552.108. Accordingly, as you raise no further exceptions to disclosure, the city must release the submitted information.¹

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 Belinke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 663838

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the requestor has a right of access to some of the information being released in this instance. See Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).