



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 14, 2019

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2019-01037

Dear Mr. Mann:

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# 746081 (ORR# GCA 18-0619).

The Garland Police Department (the "department") received a request for information pertaining to a specified incident. We understand the department is withholding some of the submitted information in accordance with Open Records Letter No. 2017-22182 (2017).¹ The department states it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we must address the procedural obligations of the department under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must

¹See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). Open Records Letter No. 2017-22182 authorizes the department to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). 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. *Id.* § 552.301(e). The department received the request for information on May 7, 2012. Thus, the department's ten-business-day deadline under section 552.301(b) was September 28, 2018, and its fifteen-business-day deadline under section 552.301(e) was October 5, 2018.

We note the envelope in which the department originally submitted the information required by section 552.301(b) was returned to the department. The envelope in which the department resubmitted the information required by section 552.301 has two postmarks: one dated October 22, 2018, and the other October 30, 2018. *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). Section 552.308 of the Government Code provides when a submission within a specified time period is required under the Act, the time requirement is met if the submission is sent by first class mail "with postage . . . prepaid" and the postmark date is within the required time period. *See id.* § 552.308. Because the department did not submit the information required by section 552.301(b) within the required time period, we find it failed to comply with the requirements of section 552.301 of the Government Code.

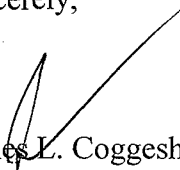
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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). We find the department has failed to establish a compelling reason to address section 552.108. Thus, 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](#), 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 746081

Enc. Submitted documents

c: Requestor
(w/o enclosures)