



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 4, 2019

Ms. Michelle Buendia  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
1400 South Lamar, 6FL, 6W  
Dallas, Texas 75215

OR2019-03167

Dear Ms. Buendia:

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# 748711 (ORR# D027637-102418).

The Dallas Police Department (the "department") received a request for all reports regarding a specified incident. You state you have released most of the requested information. You claim the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you have submitted.

Initially, you state the department does not possess the required hardware to download the remaining data at issue and assert you do not have to purchase software or hardware to accommodate a request. You raise section 552.101 of the Government Code in conjunction with section 552.228 of the Government Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. We note section 552.101 does not encompass section 552.228. However, you cite section 552.228(b) of the Government Code for your request to withhold information because you do not have the technological ability to download the information at issue due to data size. Section 552.228(b) provides:

(b) If public information exists in an electronic or magnetic medium, the requestor may request a copy in an electronic medium, such as on diskette or on magnetic tape. A governmental body shall provide a copy in the requested medium if:

- (1) the governmental body has the technological ability to produce a copy of the requested information in the requested medium;
- (2) the governmental body is not required to purchase any software or hardware to accommodate the request; and
- (3) provision of a copy of the information in the requested medium will not violate the terms of any copyright agreement between the governmental body and a third party.

*Id.* § 552.228(b). Section 552.228(b) applies when the requestor requests information be provided to her in a specified medium, such as diskette or magnetic tape. *See id.* In this instance, the requestor seeks a copy of investigative information pertaining to the death of a named individual and does not specify the requested information be provided in a particular medium. Thus, we find section 552.228(b) is not applicable in this instance. We note section 552.226 of the Government Code states the Act does not authorize the removal of an original copy of a public record from the office of a governmental body. *Id.* § 552.226. However, section 552.228(a) explicitly requires a governmental body to provide “a suitable copy of public information within a reasonable time after the date on which the information is requested.” *Id.* § 552.228(a). Further, section 552.221 (a) provides “an officer for public information of a governmental body shall promptly produce public information for *inspection*, duplication, or both on application by any person to the officer.” *See id.* § 552.221(a) (emphasis added); *Moore v. Collins*, 897 S.W.2d 496, 499 (Tex. App.—Houston [1st Dist.] 1995, no writ) (holding section 552.221 required governmental body to respond to request for information either by presenting requestor with the requested information for copying or by informing him it was in active use or storage); Open Records Decision Nos. 682 at 7 (2005) (section 552.221 requires governmental body to either provide information for inspection or duplication or send copies of information by first-class mail), 512 at 1 (1988) (predecessor provisions of the Act gives requestor option to take notes from original documents, pay for copies of public records, or both). The language of section 552.221 does not give the public information officer the discretion to choose whether to comply; upon request for the information, the officer must make the information available as required under section 552.221. *Moore*, 897 S.W.2d at 499. However, chapter 70 of Title 1 of the Texas Administrative Code provides for the costs a governmental body may charge a requestor to provide copies of public information under the Act. *See* 1 T.A.C. §§ 70.3 (discussing charges for providing copies of public information), (b)(2) (discussing charges for various mediums for providing information). Thus, the department must comply with the Act with regard to the remaining requested information.

Next, we must address the department’s obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving a request for information it seeks to withhold a copy of the specific information requested or representative samples of the information. *See* Gov’t Code § 552.301(e)(1)(D). As of the date of this letter, the department has not submitted to

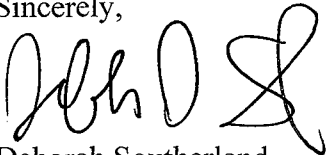
this office a copy or representative sample of the remaining requested information. As noted above, you state the department does not possess the required hardware to download the data. We note the fifteen-business-day deadline to submit a copy of the information requested is statutorily imposed on the department by section 552.301(e), and this office is required to adhere to this provision when determining the timeliness of the submissions made by the department for purposes of requesting a ruling under the Act. *See id.* §§ 552.301, .302, .306. We conclude the department failed to comply with the procedural requirements mandated by section 552.301(e) regarding the information at issue.

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 the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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). Because you have not submitted the remaining requested information for our review, we have no basis for finding any of the information excepted from disclosure. As this office is required by section 552.306 of the Government Code to render a decision not later than the forty-fifth business day after the date this office received the department's request for a decision, we have no choice but to order the remaining requested information released pursuant to section 552.302. *See Gov't Code* §§ 552.302, .306. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 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,



Deborah Southerland  
Attorney  
Open Records Division

DS/eb

Ref: ID# 748711

c: Requestor