



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 13, 2019

Ms. Rachel Klaus
Records Technician
Bastrop Police Department
104 Grady Tuck Lane
Bastrop, Texas 78602

OR2019-25705

Dear Ms. Klaus:

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# 785593.

The Bastrop Police Department (the "department") received a request for five categories of information pertaining to a specified accident. The department states it will release some information to the requestor. The department informs us it has no information responsive to portions of the request.¹ The department claims the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions the department claims and reviewed the submitted information.

We must address the department's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. 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

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 June 24, 2019. We understand the department was closed on July 4, 2019, in observance of Independence Day. This office does not count the date the request was received or holidays for purposes of calculating a governmental body's deadlines under the Act. Accordingly, the department was required to provide the information required by section 552.301(e) by July 16, 2019. The department provided most of the information required by section 552.301(e) in an envelope postmarked July 8, 2019. However, the envelope in which the department provided the remaining information required by section 552.301(e) was postmarked August 2, 2019. *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). Consequently, we conclude the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.²

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). The department claims sections 552.108 and 552.130 of the Government Code for the submitted information. Because section 552.130 can provide a compelling reason to overcome the presumption of openness, we will address the department's argument under this section for the submitted information. However, we find the department has failed to establish a compelling reason to address its remaining exception.

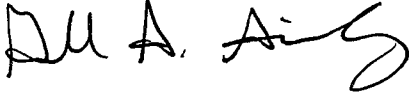
Section 552.130 of the Government Code exempts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code* § 552.130. Upon review, we find the submitted video recordings include motor vehicle record information that is confidential under section 552.130. In this instance, the department states it does not possess the technological capability to redact information from video files. Thus, we agree the department must withhold the submitted video recordings in their entireties under section 552.130 of the Government Code. *See Open Records Decision No. 364* (1983).

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.

² We note the department also failed to comply with the 25-business-day deadline for the submitted body worn camera recordings under section 1701.662 of the Occupations Code. *See Occ. Code* § 1701.662.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald Arismendez". The signature is fluid and cursive, with the first name "Gerald" and last name "Arismendez" clearly distinguishable.

Gerald Arismendez
Assistant Attorney General
Open Records Division

GAA/be

Ref: ID# 785593

Enc. Submitted documents

c: Requestor
(w/o enclosures)