



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2020

Ms. Nena Chima-Tetteh
Assistant City Attorney
City of Arlington
Mail Stop 04-0200
P.O. Box 1065
Arlington, Texas 76004-1065

OR2020-12614

Dear Ms. Chima-Tetteh:

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# 826032 (ORR# 95433).

The Arlington Police Department (the "department") received a request for a specified incident report. The department claims 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.

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 follow in asking this office to decide whether requested information is excepted from public 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 January 23, 2020. Thus, the department's ten-business-day deadline under section 552.301(b) was February 6, 2020, and its fifteen-business-day deadline under section 552.301(e) was February 13, 2020. The envelope in which the department provided the information required by section 552.301 has two postmarks: the first dated February 6, 2020, and the other dated February 14, 2020. *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). Because one of the postmarks is dated after the 10- and 15-business-day deadlines prescribed by section 552.301, we are unable to determine whether the department timely requested a ruling. Accordingly, we conclude the department failed to comply with the procedural requirements mandated by 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. Therefore, the department 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 <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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

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¹ Because the requestor has a special right of access to some of the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 826032

Enc. Submitted documents

c: Requestor
(w/o enclosures)