



February 21, 2001

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2001-0628

Dear Mr. Weir:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144354.

The City of San Antonio Police Department (the “department”) received a request for information relating to an accident. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note that section 552.301(e) of the Government Code requires a governmental body seeking a ruling from this office to submit to this office a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents, within fifteen business days of receiving an open records request. You received the request for information on November 29, 2000. However, the envelope in which you sent the requested information was not postmarked until December 21, 2000, a day after the fifteen day deadline.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to timely submit to this office the information required in section 552.301(e) results in the legal presumption that the 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 Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov’t Code § 552.302); Open Records Decision No. 319 (1982). You contend that the requested information is excepted under section 552.108 of the Government Code. However, you have not demonstrated a compelling reason for withholding the requested information under section 552.108. *See Open Records Decision No. 473 at 2 (1987)* (discretionary exceptions under the Public Information Act can be waived); *but see Open*

Records Decision No. 586 (1991) (when a governmental body fails to timely seek an attorney general decision under the Public Information Act, the need of another governmental body may provide a compelling reason for withholding the requested information). Nonetheless, section 552.130 of the Government Code may provide a compelling reason to withhold information sufficient to overcome the section 552.302 presumption of openness. *See, e.g.*, Open Records Decision No. 150 (1977) (information made confidential by law or that affects third party interests may provide compelling reason for withholding under statutory predecessor to section 552.302).

Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, you must withhold the Texas driver's license number and Texas license plate number contained in the submitted information under section 552.130. However, you must release the remainder of the requested information.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

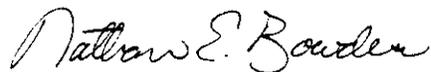
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 144354

Encl: Submitted documents

cc: Mr. Antonio M. Alvarado
Inno Tech Engineering Services
8627 Cinnamon Creek, Building 301
San Antonio, Texas 78240
(w/o enclosures)