



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 27, 2004

Ms. Courtney Alvarez  
City Attorney  
City of Kingsville  
P.O. Box 1458  
Kingsville, Texas 78364

OR2004-4354

Dear Ms. Alvarez:

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# 203772.

The City of Kingsville (the "city") received a request for a recording of a particular 911 call, video recordings from police cars that responded to the call, and correspondence with an insurance carrier.<sup>1</sup> You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that a portion of the submitted information is subject to a previous ruling by this office. *See* Open Records Letter No. 2004-4342 (2004). Because the facts and circumstances surrounding that ruling do not appear to have not changed, you may continue to rely on our previous ruling with respect to the documents we have marked. *See* Open Records Decision No. 673 at 6-7 (2001) (criteria of previous determination regarding specific information previously ruled on).

We next address the city's obligations under the Act. Section 552.301(a) of the Government Code requires that a governmental body that receives a written request for information that it wishes to withhold and for which there has not been a previous determination to request

---

<sup>1</sup>As you have not submitted a copy of the request, we take our description from your brief.

<sup>2</sup>Although you also raised section 552.101 as a possible exception to disclosure, you have not indicated that any of the submitted information falls within this exception and have provided no arguments regarding such exception. We therefore assume you are no longer claiming this exception. *See* Gov't Code § 552.301.

a ruling from this office. Pursuant to section 552.301(e) the governmental body must submit the following information to this office within fifteen business days of its receipt of the request: (1) general 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. *See* Gov't Code § 552.301(a), (e). In this instance, you have not provided a copy of the written request for information and thus have failed to comply with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of 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* Gov't Code § 552.302; *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 section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977).

You claim that the remaining submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. These sections are discretionary exceptions that protect a governmental body's interests and may be waived. As such, they do not generally constitute a compelling reason to withhold information. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general); *but see* Open Records Decision No. 586 at 3 (1991) (need of another governmental body to withhold information under predecessor to section 552.108 provided compelling reason to withhold information). Therefore, none of the remaining submitted information may be withheld pursuant to section 552.103 or 552.108.

We note, however, that the remaining submitted information includes a "Texas Peace Officer's Accident Report." Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by other statutes. Section 550.065(b) of the Transportation Code states that it "applies only to information that is held by the [Department of Public Safety] or another governmental entity and relates to a motor vehicle accident reported under [chapter 552] or Section 601.004 [of the Transportation Code.]" This section states that, except as provided by subsection (c),

accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident, (2) the name of any person involved in the accident, and (3) the specific location of the accident. *See* Transp. Code § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.*

Because you have not submitted the request for information, we cannot determine whether the requestor has provided the city with at least two of the three listed pieces of information and must rule conditionally. If the requestor has provided the city with at least two of the three listed pieces of information, the city must release an unredacted copy of the "Texas Peace Officer's Accident Report" to him. *See* Open Records Decision No. 525 (1989) (exceptions found in predecessor to Act do not, as general rule, apply to information that is made public by other statutes). If, however, the requestor has not provided the required information, the city must withhold this report pursuant to section 552.101 in conjunction with section 550.065.

We also note that the remaining submitted information includes Texas-issued motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. We have indicated the information that the city must withhold pursuant to section 552.130.

In summary, you may continue to rely on our ruling in Open Records Letter No. 2004-4342 (2004) to the extent the submitted information was the subject of that ruling. With respect to the information that was not considered in that ruling, you must withhold the marked "Texas Peace Officer's Accident Report" under section 552.101 in conjunction with section 550.065 unless the requestor has complied with the release provision of section 550.065. In addition, you must withhold Texas-issued motor vehicle record information pursuant to section 552.130. The remaining submitted information must be released.

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).

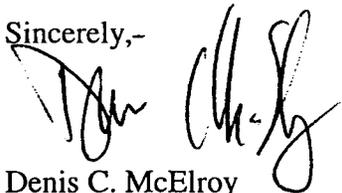
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,-



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/krl

Ref: ID# 203772

Enc. Submitted documents

c: Mr. Quincy C. Collins  
Area South Reporter  
Corpus Christi Caller-Times  
P.O. Box 9136  
Corpus Christi, Texas 78469  
(w/o enclosures)