



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 10, 2007

Mr. Anthony C. McGettrick  
Acting City Attorney  
City of Laredo  
P.O. Box 579  
Laredo, Texas 78042-0579

OR2007-08693

Dear Mr. McGettrick:

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# 287235.

The Laredo Police Department (the "department") received a request for all records pertaining to the requestor and six other named individuals for a specified period of time, as well as policy and procedure manuals. You state that some of the requested information has been delivered to the requestor, but claim that some of the submitted 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.

Initially, we note that some of the submitted information may be the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2006-00900 (2006). With regard to information in the current request that is identical to the information previously requested and ruled upon by this office, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the department may continue to rely on that ruling as a previous determination and withhold or release this information in accordance with Open Records Letter No. 2006-00900. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We must next address the department's obligations 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. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request 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(e)(1)(D). The department received the request for information on February 15, 2007, but did not request a ruling from this office or submit the information at issue until June 15, 2007. Thus, the department failed to comply with the procedural requirements mandated by 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 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *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); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is *confidential under other law*. Open Records Decision No. 150 (1977). Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 663 at 5 (1999) (*untimely request for decision resulted in waiver of discretionary exceptions*), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). *But see* Open Records Decision No. 586 at 2-3 (1991) (*claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure*). In failing to comply with section 552.301, the department has waived its claim under section 552.108. Therefore, the department may not withhold any of the submitted information under section 552.108.

To conclude, to the extent the submitted information is identical to the information at issue in Open Records Letter No. 2006-00900, the department may continue to withhold or release this information in accordance with that prior ruling. The department must release the remaining information to the requestor.

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).

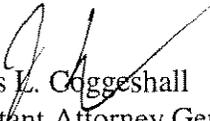
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jb

Ref: ID# 287235

Enc. Submitted documents

c: Mr. Jason Compean  
1201 St. John Street  
Laredo, Texas 78045  
(w/o enclosures)