



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 18, 2008

Mr. Roger E. Gordon  
Bovey & Bojorquez, L.L.P.  
12325 Hymeadow Drive, Suite 2-100  
Austin, Texas 78750

OR2008-11268

Dear Mr. Gordon:

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# 319345.

The City of Brenham (the "city"), which you represent, received a request for copies of "the Brenham Police Department's Policy and Procedure Manuals, Rules and Regulations and/or General Orders as they relate to: initiating traffic stops, conducting arrests, impounding automobiles, and officer interaction with confidential informants, undercover agents and/or witnesses." You claim that the responsive information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note that the request is limited to "Policy and Procedure Manuals, Rules and Regulations and/or General Orders as they relate to: initiating traffic stops, conducting arrests, impounding automobiles, and officer interaction with confidential informants, undercover agents and/or witnesses." Accordingly, any policy and procedure manuals, rules and regulations, or general orders other than those specifically requested are not responsive to the instant request. This decision does not address the public availability of any such non-

---

<sup>1</sup>We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

responsive information, and such information need not be released. We will address the applicability of the claimed exceptions to the responsive information.

We note that the remaining requested information appears to have been the subject of a previous request, as a result of which this office issued Open Records Letter No. 2007-16839 (2007). To the extent that there have been no changes in the facts and circumstances on which the previous ruling is based, the city must dispose of the remaining requested information in accordance with Open Records Letter No. 2007-16839.<sup>2</sup> See Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)). However, to the extent that the facts and circumstances on which the previous ruling is based have changed, we will address your claimed exceptions.

Section 552.301(e)(1)(D) of the Government Code provides that a governmental body must submit a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested. You state that "[d]ue to the voluminous nature of the requested information, totaling 220 pages, the City has attached the table of contents, providing your office with representative samples of the information contained therein. . . ." We note, however, that although you have submitted the table of contents, this does not consist of a representative sample of the requested information. Thus, based on our review of the submitted information and the request, we conclude that the submitted information is not truly representative of the requested information as a whole.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to 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 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 assert that the requested information is excepted under sections 552.101 and 552.108 of the Government Code. Section 552.108, however, is discretionary in nature. It serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver), *but see*

---

<sup>2</sup>As we are able to make this determination, we do not address your arguments against disclosure.

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). Section 552.101 can provide a compelling reason for non-disclosure of information under section 552.302. However, because you have not submitted the requested information for our review, we have no basis for finding it confidential. Thus, to the extent that the requested information is not excepted from disclosure in accordance with Open Records Letter No. 2007-16839, we have no choice but to order the requested information released pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,

A handwritten signature in cursive script, appearing to read "Jonathan Miles".

Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/jh

Ref: ID# 319345

Enc. Submitted documents

c: Ms. Casie Gotro  
The Law Office of Casie Gotro  
397 Sam Houston Parkway East, Suite 425  
Houston, Texas 77060  
(w/o enclosures)