



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 31, 2009

Chief Don Hatcher  
City of Leander  
705 Leander Drive  
Leander, Texas 78641

OR2009-04171

Dear Chief Hatcher:

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# 338529.

The Leander Police Department (the "department") received a request for the in car video regarding a specified citation.<sup>1</sup> You claim that 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 must address the department's obligations under section 552.301 of the Government Code. Section 552.301 prescribes 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 not later than the tenth business day after the date of receiving a written request for information. Gov't Code § 552.301(b). The department received the request for information on January 2, 2009. You state, and provide documentation showing, that you provided the requestor with a cost estimate that is in compliance with section 552.2615 of the Government Code. *See id.* § 552.2615 (providing that governmental body shall provide requestor with estimate of charges if charges exceed \$40). The requestor complied with section 552.2615 by accepting the charges. *See id.* § 552.2615(b). Section 552.2615 of the Government Code provides that the submission of an estimate of charges to the requestor does not toll the governmental body's deadlines to ask for an attorney general decision under section 552.301. *See id.* § 552.2615(g) (providing that "[t]he time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G"); *see also* Open Records Decision No. 663 at 2-5 (1999) (addressing circumstances under which

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<sup>1</sup>You inform us that the requestor narrowed her original request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

governmental body's communications to clarify or narrow request for information will toll section 552.301(b) deadlines). Thus, your ten-business day deadline was January 16, 2009. However, you did not request a ruling from this office until January 22, 2009. Thus, the department has failed to comply with the requirements of section 552.301(b).

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) (governmental body must make compelling demonstration to overcome presumption of openness); 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. Open Records Decision No. 150 at 2 (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). Thus, in failing to comply with section 552.301, you have waived section 552.108, and may not withhold any of the submitted information on that basis. As you have raised no further exceptions to disclosure, the submitted information must be released to the requestor.

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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Greg Henderson  
Assistant Attorney General  
Open Records Division

GH/jb

Ref: ID#338529

Enc. Submitted documents

c: Requestor  
(w/o enclosures)