



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2009

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2009-06000

Dear Ms. De La Garza:

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# 342024.

The Houston Police Department (the "department") received a request for eleven categories of information from the department jail booking system regarding all misdemeanor and felony marijuana law violations during a specified time period. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

We note a portion of the requested information is subject to a previous determination issued by this office in Open Records Letter No. 2009-03745 (2009). In that decision, this office ruled the department may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy. You have not indicated the facts and circumstances have changed since the issuance of this prior ruling. Thus, with regard to the requested information that is identical to the information previously requested and ruled on by this office, we conclude the department must continue to rely on our ruling in Open Records Letter No. 2009-03745 as a previous determination and release the information at issue in accordance with that decision. *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 a prior attorney general ruling, ruling is addressed to

same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the previous ruling, we will consider the submitted argument.

We must address the department's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving 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(e)*. The department received the request on February 15, 2009. As of this date, you have not submitted to this office arguments explaining why the stated exceptions apply or a copy or representative sample of the remaining information requested. Consequently, we find the department failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 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 when 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). Although, you claim the requested information is excepted from disclosure under section 552.101 of the Government Code, which is a mandatory exception, because you have not submitted the requested information for our review, we have no basis for finding any of the information confidential by law. Furthermore, by failing to submit any information for our review, we have no basis for finding it confidential under the claimed mandatory exceptions. Thus, we have no choice but to order the department to release the requested information in accordance with section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

In summary, the department must release the information subject to the previous determination issued by this office in Open Records Letter No. 2009-03745. The remaining information must be released.

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, 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,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/rl

Ref: ID# 342024

Enc. Submitted documents

c: Requestor
(w/o enclosures)