



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 1, 2010

Mr. Robert E. Reyna
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2010-09742

Dear Mr. Reyna:

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# 385167 (COSA# 2010-5551).

The City of San Antonio (the "city") received a request for the supplement to offense report number 9-0526348 written by a named officer. You claim 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 the requestor seeks only the supplement written by a named officer for offense report number 9-0526348. The submitted information consists of an offense report, an investigative report, and a prosecution guide written by officers other than the officer named in the request. Therefore, the submitted information is not responsive to the instant request. This decision does not address the public availability of any information that is not responsive to this request, and the city need not release such information in response to the request.

Next, we must address the city's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a 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)*. As of the date of this letter, you have not submitted to this office a copy or representative sample of

the requested supplement. Consequently, we find the city has failed to comply with the procedural requirements of section 552.301.

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. The information at issue is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.108 is a discretionary exception to disclosure that protect the governmental body's interests and may be waived by the governmental body. *See* Open Records Decision Nos. 177 (1977) (governmental body may waive statutory predecessor to section 552.108), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, we determine the city has waived its claim under section 552.108 of the Government Code. Thus, to the extent the requested supplement written by the named officer exists, we have no choice but to order it released pursuant to section 552.302. If the information exists and you believe it is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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, toll free at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jb

Ref: ID# 385167

Enc. Submitted documents

c: Requestor
(w/o enclosures)