



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2010

Ms. Ceclia Gamez, C.S.S. – C.L.
Crime Records Bureau
McAllen Police Department
P.O. Box 220
McAllen, Texas 78501

OR2010-11592

Dear Ms. Gamez:

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# 388959.

The McAllen Police Department (the “department”) received a request for records related to case numbers 2009-130268, 2010-013677, 2010-015521, and 2010-037346. You state you have released a portion of the requested information to the requestor. 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.

We must 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. *See Gov’t Code* § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body’s claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). You state, and the request reflects, the department received the request for information on May 4, 2010. However, both the brief requesting a decision from this office and the information responsive to the request were sent to this office in an envelope postmarked May 26, 2010. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail,

common or contract carrier, or interagency mail). You do not inform us the department was closed for any business days between May 4, 2010, and May 26, 2010. Thus, the department failed to comply with the requirements mandated by subsections 552.301(b) and (e).

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 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 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, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Although you raise section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protect a governmental body's interests and that 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). Accordingly, your claim under section 552.108 does not provide a compelling reason for non-disclosure, and the department may not withhold any of the submitted information pursuant to that exception. As you raise no other exceptions to disclosure, the submitted 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, toll free, at (888) 672-6787.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/eeg

Ref: ID# 388959

Enc. Submitted documents

cc: Requestor
(w/o enclosures)