



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2010

Mr. David Hamilton
Attorney at Law
3830 Farm Road 195
Paris, Texas 75462

OR2010-12337

Dear Mr. Hamilton:

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# 390570.

The City of Reno (the "city"), which you represent, received a request for records pertaining to cows loose on the requestor's yard. You state that the city will release some of the requested information. 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.

We must address the city's procedural obligations under the Act. Section 552.301 of the Government Code 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 within ten business days of receiving the written request. *See Gov't Code* § 552.301(b). Furthermore, 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 an open records request general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld. *Id.* § 552.301(e)(1)(A). You inform us that the city received the present request for information on June 2, 2010. Thus, the city's ten-business-day deadline under section 552.301(b) was June 16, 2010, and the city's fifteen-business-day deadline under section 552.301(e) was June 23, 2010. However, you did not state the exceptions that apply until June 29, 2010.

Furthermore, as of the date of this letter, you have not submitted written arguments stating why the stated exception applies. Thus, the city has 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 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 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). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 is a discretionary exception to disclosure that a governmental body may waive. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the city may not withhold any of the information at issue under section 552.108. As you raise no further exceptions to disclosure, the requested information must be released in its entirety.

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 390570

Enc. Submitted documents

c: Requestor
(w/o enclosures)