



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 24, 2010

Mr. David M. Douglas  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2010-12879

Dear Mr. Douglas:

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# 391472.

The Austin Police Department (the "department") received a request for (1) the names, addresses, and telephone numbers of person or entities who, during a specified time period, designed, produced, or programmed hardware, software, or firmware used by the department to communicate information pertaining to a person's immigration or citizenship status; (2) the type, class, scope, extent, nature, and sources of information provided by the department during a specified time period to five named federal agencies; (3) the type, class, scope, extent, nature, and sources of information, including but not limited to how immigration or citizenship status is verified, provided by nine named federal and state agencies during a specified time period to the department; (4) information on how the department verifies immigration or citizenship status, including the name of the system and the names, addresses, and telephone numbers of the persons or entities who designed or manage the system, and 5) a list of every program, grant, plan, operation, order, policy, law, statute, code, and regulation since a specified time period relating to any mandatory or permissible joint-venture between the department and the nine named federal and state

agencies.<sup>1</sup> You claim some the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim.

We must address the department's procedural obligations under the Act. Section 552.301 of the Government Code 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(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records 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. Gov't Code § 552.301(e)(1)(A)-(D). As of this date, you have not submitted to this office a copy or representative sample of the information requested or written comments stating the reasons your claimed exceptions apply to the requested information. Accordingly, we conclude the department 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. 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 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 where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). You assert the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. In failing to comply with the procedural requirements of section 552.301, you have waived your claim under section 552.108. *See* Open Records Decision Nos. 177 (1977) (statutory predecessor to section 552.108 subject to waiver); 522 (1989) (discretionary exceptions in general). Accordingly, the department may not withhold the requested information under section 552.108. Furthermore, by failing to submit any information for our review, we have no basis for finding it confidential under section 552.101. Thus, we have no choice but to order the requested information released pursuant to section 552.302. 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.

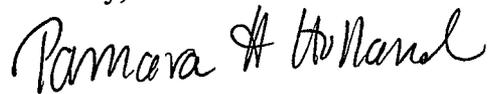
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<sup>1</sup>The submitted information reflects that the requestor amended his request.

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, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Tamara H. Holland".

Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/dls

Ref: ID# 391472

c: Requestor