



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 24, 2011

Mr. Mark J. Schroeder
Law Firm of Ted W. Hejl
For the City of Taylor
P.O. Box 192
Taylor, Texas 76574

OR2011-07293

Dear Mr. Schroeder:

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# 418766.

The City of Taylor (the "city"), which you represent, received a request for (1) the training files of a named officer pertaining to the proper use of the speed radar unit the officer used on a specified date; (2) the calibration records as well as the make, model, and serial number of the speed radar unit used by the named officer on the specified date; (3) a copy of the in-car video recordings of all traffic stops made by the named officer on the specified date; (4) a full listing of speeding citations that were issued in a specified location during a specified period of time; (5) the engineering and traffic investigation study for the speed limit of a specified location; and (6) the Texas Department of Transportation's acceptance of this speed limit. 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 you have only submitted information responsive to portions of items (2) and (4) of the request. Therefore, to the extent information responsive to the remainder of the request existed at the time the city received the request for information, we assume you have released it to the requestor. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Next, we must address the city's obligations under the Act. Section 552.301 of the Government Code describes the obligations placed on a governmental body that receives a written request for information it wishes to withhold. 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 (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). You state the city received the request for information on March 10, 2011. Accordingly, the city's fifteen business-day deadline under section 552.301(e) was March 31, 2011. You submitted a copy of a portion of the specific information requested in an envelope bearing a postmark date of April 12, 2011. *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). Consequently, we find 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 requirements of section 552.301 results in the legal presumption 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). 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). Although you raise section 552.108 of the Government Code, this section is a discretionary exception that protects a governmental body's interests and 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). As such, it does not constitute a compelling reason to withhold information. Accordingly, in failing to comply with section 552.301, the city has waived its claim under section 552.108. As you raise no further exceptions to disclosure, the submitted information must be released to the requestor.¹

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.

¹We note the requestor, in this instance, has a special right of access under section 552.023 of the Government Code to some of the information being released. Accordingly, if the city should receive another request for this information from someone without such a right of access, the city should again request an opinion from this office.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bs

Ref: ID# 418766

Enc. Submitted documents

c: Requestor
(w/o enclosures)