



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 2, 2011

Ms. Cecilia Gamez  
Crime Records Bureau  
McAllen Police Department  
P.O. Box 220  
McAllen, Texas 78501

OR2011-07795

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# 424291.

The McAllen Police Department (the "department") received a request for a specified report. 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 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). You state, and the request reflects, the department received the request for information on April 25, 2011. Thus, the department's ten-business-day deadline was May 9, 2011. Although your brief requesting a decision from this office was dated April 27, 2011, the envelope in which it was sent bears a postmark of May 11, 2011. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Thus, we conclude the department failed to comply with the requirements mandated by section 552.301(b).

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). You claim exception to disclosure under section 552.108 of the Government Code, which is a discretionary exception and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (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 on the basis of your claim under that section. As you raise no further exceptions to its 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](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,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/em

Ref: ID# 424291

Enc. Submitted documents

c: Requestor  
(w/o enclosures)