



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 12, 2011

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2011-09881

Dear Mr. Weir:

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# 423516 (COSA File No. W000659).

The City of San Antonio (the "city") received a request for photographs related to case number 90862816-01. 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.

Initially, we note the requestor only seeks the photographs related to case number 90862816-01. Thus, the submitted incident reports and other documents, which we have marked, are not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.

We must address the city's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). The city states it received the request for information on April 18, 2011. Accordingly, the city's ten-business-day deadline was May 2, 2011. The city's request for a ruling, however, was mailed in an envelope postmarked May 5, 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 failed to comply with the requirements of section 552.301(b).

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; the governmental body can overcome this presumption only by demonstrating 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 generally exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although you claim an exception to disclosure under section 552.108 of the Government Code, that section is a discretionary exception that protects a governmental body's interests, and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the city may not withhold any of the submitted responsive photographs under section 552.108. As you raise no further exceptions against disclosure, the city must release the submitted responsive photographs.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 423516

Enc. Submitted documents

c: Requestor
(w/o enclosures)