



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2011

Mr. James Mu
Assistant General Counsel
Texas Department of Criminal Justice
Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2011-16123

Dear Mr. Mu:

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# 434979.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to (1) guidelines for determining when certain types of testing will be conducted after a positive preliminary analytical drug test; (2) guidelines for preservation of urine samples used during MedTox Sure Screen drug testing, and (3) a copy of the drug test disclaimer used during disciplinary hearings. You indicate some of the responsive information has been or will be made available to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim.

Initially, you inform us some of the requested information was the subject of a previous request for a ruling, in response to which this office issued Open Records Letter No. 2010-13870 (2010). In that decision, we ruled that the information at issue was excepted from disclosure under section 552.108(b)(1) of the Government Code. As we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, the department may continue to rely on that ruling as a previous determination and continue to withhold this same information in accordance with that decision. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when records or information at issue are precisely same records or information that were

previously submitted to this office pursuant to section 552.301(e)(1)(D); governmental body which received request for records or information is same governmental body that previously requested and received ruling from attorney general; prior ruling concluded that precise records or information are or are not excepted from disclosure under Act; and law, facts, and circumstances on which prior ruling was based have not changed since issuance of ruling).

We must address the department's procedural obligations under the Act for the remaining requested information. 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 remaining requested information. Accordingly, we conclude the department failed to comply with the procedural requirements of section 552.301 for this information.

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 remaining requested information is excepted from disclosure under section 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 remaining requested information under section 552.108. Thus, we have no choice but to order the remaining requested information released to the requestor pursuant to section 552.302 of the Government Code. If you believe there is a compelling reason to withhold the information, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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,

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

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ag

Ref: ID# 434979

c: Requestor