



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 17, 2011

Captain Wayne Davis  
City of Castle Hills Police Department  
209 Lemonwood Drive  
San Antonio, Texas 78213

OR2011-16966

Dear Captain Davis:

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# 436386.

The City of Castle Hills Police Department (the "department") received a request for two specified witness statements.<sup>1</sup> You seek to withhold the requested information pursuant to the Act. We have considered your claim.

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(b), 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). Pursuant to section 552.301(e), a governmental body that receives a request for information it wishes to withhold under the Act is required to submit to this office within fifteen business days of receiving the 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

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<sup>1</sup>As you did not submit the requestor's written request for information, we take our description from the letter you submitted to this office.

requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e).

The department has not provided this office with a statement or evidence of the date that the department received the instant request for information as required by section 552.301(e)(1)(c). *See id.* § 552.301(e)(1)(c). We note that without the required statement or evidence of the date of receipt of the request, we are unable to determine whether the department complied with its ten- and fifteen-business-day deadlines under sections 552.301(b) and (e) respectively. Further, you have not submitted a statement of the exceptions to disclosure that you claim apply, a copy of the written request for information, or a copy or representative sample of the specific information requested. Accordingly, we find the department has failed to comply with the requirements of sections 552.301(b) and (e) in seeking a ruling from this office.

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 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 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public); *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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977).

In this instance, because you have not submitted any of the responsive information for our review, we have no basis for finding it confidential by law. Thus, we have no choice but to order the department to release the responsive information in accordance with section 552.302 of the Government Code. 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.

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 black ink, appearing to read 'K. Conyer', written over a horizontal line.

Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/agn

Ref: ID# 436386

Enc. Submitted documents

c: Requestor  
(w/o enclosures)