



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 21, 2012

Ms. Tiffany N. Evans  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2012-01143A

Dear Ms. Evans:

This office issued Open Records Letter No. 2012-01143 (2012) on January 24, 2012. In that ruling we determined that the Houston Police Department (the “department”) failed to submit to this office general written comments stating the reasons why the stated exceptions apply or a copy or representative sample of the information requested. Thus, we had no basis to determine the department may or must withhold the information at issue, and ordered its release. The department has now submitted the requested information to this office and is asking this office to reconsider Open Records Letter No. 2012-01143. We have considered the department’s request. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on January 24, 2012. *See generally* Gov’t Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act).

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# 450169 (GC No. 19106).

The department received a request for information pertaining to allegations of misconduct against a named officer. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We must address the department's obligations under the Act. Section 552.301 of the Government Code prescribes 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 id.* § 552.301(b). Pursuant to section 552.301(e), the governmental body must, within fifteen business days of receiving the request, submit to this office (1) 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. *Id.* § 552.301(e)(1)(A)-(D). You inform us the department received the present request for information on October 31, 2011. Thus, the department's ten-business-day deadline under section 552.301(b) was November 15, 2011, and the department's fifteen-business-day deadline under section 552.301(e) was November 22, 2011. While the department timely requested a ruling from this office on November 15, 2011, we note the department did not submit the required documents to this office until February 3, 2012. You state the department sought clarification from the requestor on November 22, 2011. Thus, we understand you to claim the fifteen-business-day deadline should be reset from the date the department receives clarification from the requestor. However, we note the department did not request clarification of the request until after the ten-business-day deadline had passed. As such, the statutory deadline for submitting the required documents was not reset and must be measured from the date the department received the request for information on November 15, 2011. *See generally City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (after requesting clarification within ten-business-day deadline, city timely submitted request for opinion within ten business days after receiving clarification). Consequently, we find the department failed to comply with the procedural requirements mandated by 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 requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See Gov't Code* § 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). Generally, 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. Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider your claim under this section.

Next, you inform us the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-11257

(2011). As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the department must continue to rely on that ruling as a previous determination and withhold the submitted information in accordance with Open Records Letter No. 2011-11257. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). As we are able to make this determination, we need not address your argument against disclosure of the submitted information.

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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/agn

Ref: ID# 450169

Enc. Submitted documents

c: Requestor  
(w/o enclosures)