



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 15, 2012

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

OR2012-07222

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# 453768 (COSA File No. W006087).

The San Antonio Police Department (the "department") received a request for all reports, documents, notes, photographs, videotapes, audiotapes, tape recordings, statements, and citations issued regarding a specified investigation involving the requestor's clients. You state the department has released some information to the requestor. You claim 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 must address the department's obligations under the Act. Section 552.301 of the Government Code describes the 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. Gov't Code § 552.301(b). You state the department received the request on February 28, 2012 and there is a date stamp on the request bearing the date February 28, 2012. However, the facsimile header on the request indicates it was transmitted at 2:55PM on February 27, 2012. You represented to this office that the facsimile number to which the request was sent is the correct facsimile number for the department's public information officer or the officer's designee. *See id.* § 552.301(c) (stating a written request includes a request in writing that is sent to the officer for public information, or the person designated by that officer, by facsimile). Thus, for the purposes of calculating the

department's response deadlines, we find the department received the request for information on February 27, 2012. Accordingly, the department's ten-business-day deadline was March 12, 2012. However, your request for a ruling from this office was postmarked March 13, 2012. *See id.* § 552.308 (providing ten-day deadline met if request for ruling bears post office mark indicating time within ten-day period). Consequently, we find the department failed to comply with the requirements of section 552.301.

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 unless the governmental body demonstrates 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) (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 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). You raise section 552.108 as an exception to disclosure of the remaining requested information. However, section 552.108 is a discretionary exception that protects a governmental body's interests 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). Therefore, the department's claim under section 552.108 is not a compelling reason to overcome the presumption of openness under section 552.302. Accordingly, the department may not withhold the submitted information on the basis of section 552.108 of the Government Code. However, we note a portion of the submitted information is subject to section 552.130 of the Government Code.¹ As section 552.130 can provide a compelling reason to withhold the information, we will consider its applicability to the submitted information.

The submitted information contains a license plate number. Section 552.130 of the Government Code provides that information related to a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. Gov't Code § 552.130(a)(2). The department must withhold the license plate number we have marked under section 552.130 of the Government Code. The remaining 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.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 "Jessica Marsh".

Jessica Marsh
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 453768

Enc. Submitted documents

c: Requestor
(w/o enclosures)