



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 24, 2012

Ms. Lysia H. Bowling  
City Attorney  
City of San Angelo  
P.O. Box 1751  
San Angelo, Texas 76902

OR2012-07968

Dear Ms. Bowling:

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# 454678.

The San Angelo Police Department (the "department") received a request for a specified incident report. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.152 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, the department failed to comply with its procedural obligations in asking this office for a ruling. *See* Gov't Code § 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 the information is public and must be released. Information 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; *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

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<sup>1</sup>We understand you to raise section 552.152 based on the content of your arguments.

demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). 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). Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). However, the need of a governmental body, other than the one that has failed to timely seek an open records decision, to withhold information under section 552.108 can provide a compelling reason for non-disclosure under section 552.302. Open Records Decision No. 586 (1991). You do not provide this office with such a representation. Accordingly, section 552.108 of the Government Code does not provide a compelling reason for non-disclosure in this instance, and the department may not withhold the submitted information on that basis.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

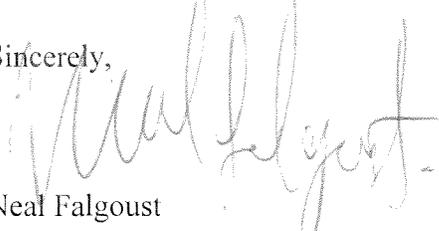
Gov't Code § 552.152. You state a portion of the submitted information identifies undercover officers and release of this information would subject those officers to a substantial threat of physical harm. Based on your representations and our review, we conclude the department must withhold the information we have marked under section 552.152 of the Government Code. You have not demonstrated how the remaining information would subject any officer to a substantial threat of physical harm, and that information may not be withheld on that basis. As you raise no other exceptions, 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.

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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/ag

Ref: ID# 454678

Enc. Submitted documents

c: Requestor  
(w/o enclosures)