



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 6, 2012

Chief W. J. Sala
City of Luling Police Department
1800 East Pierce
Luling, Texas 78648

OR2012-14150

Dear Chief Sala:

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# 467208.

The Luling Police Department (the "department") received two requests from the same requestor for probable cause affidavits related to a named individual, two specified case numbers, and three specified investigations. You state the department has released some of the requested information, but claim the remaining information at issue is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the department's obligations under section 552.301 of the Government Code, which 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), 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. Pursuant to section 552.301(e), a governmental body must submit to this

¹Although you also raised section 552.109 of the Government Code, which excepts from release certain communications of an elected office holder, from your arguments we understand you to assert section 552.108 of the Government Code for this information instead.

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.

You do not inform us when the department received the requests for information. *See id.* § 552.301(e)(1)(C). Therefore, we must assume the department received the requests on the day they both are dated. The first request is dated May 23, 2012; thus, the ten-business-day deadline for this request under section 552.301(b) was June 7, 2012, and its fifteen-business-day deadline under section 552.301(e) was Jun 14, 2012. The second request is dated June 7, 2012; thus, the ten-business-day deadline for this request was June 21, 2012, and its fifteen-business-day deadline was Jun 28, 2012. However, the department did not request a ruling from this office regarding these requests, raise any exceptions, or submit copies of the requests for information until July 26, 2012. *See id.* § 552.301(b), (e). In addition, as of the date of this letter, the department has not submitted a copy or representative sample of the requested information. *See id.* § 552.301(e)(1)(C). Accordingly, the department failed to comply with the procedural requirements mandated by section 552.301.

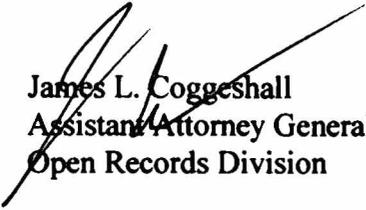
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason 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); *see also* 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 is a discretionary exception to disclosure that protects a governmental body's interests. *See* Open Records Decision Nos. 665 at 5 (2000) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). *But see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). Thus, the department's claim under section 552.108 is not a compelling reason to overcome the presumption of openness. Therefore, the department may not withhold any of the requested information under section 552.108. Although section 552.101 of the Government Code can provide a compelling reason for nondisclosure of information under section 552.302, we have no basis for concluding the requested information is excepted under this section because you failed to submit any portion of it to us for our review. Therefore, we have no choice but to order the department to release the requested information in accordance with section 552.302 of the Government Code. If the department

believes the information is confidential and may not lawfully be released, the department 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 467208

c: Requestor
(w/o enclosures)