



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 27, 2012

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

OR2012-15444

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# 470742 (COSA File No. W009726).

The City of San Antonio (the "city") received a request for case number 12092724. 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.

We must address the city's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. 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). The city received the request for information on August 20, 2012. You have submitted information showing the city was closed September 3, 2012. This office does not count holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. Thus, the city's ten-business-day deadline was September 4, 2012. You did not, however, request a ruling from this office until September 5, 2012. *See id.* § 552.308 (providing ten-day deadline met if request for ruling bears post office mark indicating time within ten-day period). Thus, we find the city 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 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 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, 381-82 (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). Although you assert the submitted information is excepted under section 552.108 of the Government Code, this exception is discretionary in nature. It serves only to protect a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. Thus, the city may not withhold the submitted information under section 552.108 of the Government Code. As you have not claimed any other exceptions to disclosure, the city must release the submitted information.<sup>1</sup>

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/ag

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<sup>1</sup>We note the requestor in this instance has a special right of access to some of the information being released. Gov't Code § 552.023. Because this information is confidential with respect to the general public, if the city receives a future request for this information from an individual other than the requestor or the requestor's authorized representative, the city should again seek our decision.

Ref: ID# 470742

Enc. Submitted documents

c: Requestor  
(w/o enclosures)