



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 9, 2012

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

OR2012-18114

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# 470927 (COSA File No. W009777).

The City of San Antonio (the "city") received a request for the civil service files of three named city police officers. You claim the requested information is excepted from disclosure under sections 552.101 through 552.153 of the Government Code. We have considered the exceptions you claim.

Initially, we note some of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-16870 (2012). In that decision, we ruled the city (1) may withhold the information we marked under section 552.108(a)(1) of the Government Code; (2) must withhold the information we marked under section 552.101 of the Government Code in conjunction with the MPA and common-law privacy; (3) must withhold the types of information we marked under section 552.117(a)(2) of the Government Code, including cellular telephone numbers, if the individuals whose information we marked are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure and the cellular telephone services are not paid for by a governmental body; (4) must withhold the types of information we marked under section 552.117(a)(1) of the Government Code, including cellular telephone numbers, if the individuals whose information we marked are not currently licensed peace officers as defined by article 2.12, timely elected confidentiality under section 552.024 of the

Government Code, and the cellular telephone services are not paid for by a governmental body; (5) must withhold the types of information we marked under section 552.1175 if the individuals to whom this information pertains are currently commissioned security officers who elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code; (6) must withhold the types of information we marked and indicated under section 552.130 of the Government Code; (7) must withhold the insurance policy number we marked under section 552.136; and (8) must release the remaining information. To the extent the relevant law, facts, and circumstances on which the previous ruling was based have not changed and the requested information is identical to the information at issue in that ruling, we conclude the city must rely on Open Records Letter No. 2012-16870 as a previous determination and withhold or release such information in accordance with that ruling. *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). To the extent the requested information is not encompassed by the prior ruling, we will consider the exceptions you claim.

We must address the city's obligations under the Act. Section 552.301 of the Government Code 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(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed 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. Gov't Code § 552.301(e)(1)(A)-(D). As of this date, you have not submitted to this office arguments stating why any claimed exceptions apply to the information at issue, or a copy or representative sample of the information requested. Accordingly, we conclude 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 submit to this office the information required in section 552.301(e) results in the legal presumption that the requested information is public and must be released. Information that is 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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630.

Because you failed to comply with the requirements of the Act, the city has waived all of its claimed discretionary exceptions to disclosure. *See* Open Records Decision No. 665 at 2 n.5 (2000) (untimely request for decision results in waiver of discretionary exceptions). Although the city also raises mandatory exceptions to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information confidential by law. Thus, we have no choice but to order the requested information released pursuant to section 552.302, to the extent it is not subject to Open Records Letter No. 2012-16870. If you believe the information is confidential and may not lawfully be released, you 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](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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/tch

Ref: ID# 470927

c: Requestor