



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 9, 2012

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

OR2012-18128

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# 470989.

The City of San Angelo (the "city") received a request for a list, in electronic format, of residential properties with open cases with the city's code enforcement department of specified code violations for the last twelve months. 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 representative sample of information.<sup>1</sup>

Initially, you claim the request for information is overbroad in scope. However, a governmental body may not refuse to comply with the requirements of the Act on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976); *see also* Open Records Decision No. 497 at 4 (1988) (fact that submitting copies for review may be burdensome does not relieve governmental body of its

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

responsibility to do so). Section 552.222 of the Government Code authorizes a governmental body to ask the requestor to clarify or narrow requests for information that are unclear or burdensome. *See* Gov't Code § 552.222(b). You have not elected to do so. Therefore, the city is required to make a good faith effort to relate the request to information that is within the city's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). We assume you have done so. Accordingly, we will address your claimed exception to disclosure of the submitted representative sample of responsive information.

Next, you state the city is unable to produce the requested records in electronic format. *See id.* § 552.228(a) ("If public information exists in an electronic or magnetic medium, the requestor may request a copy either on paper or in an electronic medium, such as on diskette or on magnetic tape"). Section 552.228(b) of the Government Code requires a governmental body to provide electronically stored information in the requested medium if it has the technological ability to do so without the purchase of software or hardware. *Id.* § 552.228(b). Thus, based on your representations, we determine that to the extent the requested information is subject to release, the city must provide the information in paper format or in another medium acceptable to the requestor. *See* Gov't Code § 552.228(c).

Next, you acknowledge, and we agree, the city failed to comply with its deadlines under section 552.301 of the Government Code in requesting a ruling from our office. *See* Gov't Code § 552.301(b). 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 there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *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. The city claims section 552.108 of the Government Code for the submitted information. However, this exception is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See* Gov't Code § 552.007; Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, no portion of the submitted information may be withheld under section 552.108 of the Government Code. As no further exceptions to disclosure have been raised, the submitted 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,

A handwritten signature in black ink, appearing to read "Kristi L. Wilkins". The signature is fluid and cursive, with a large initial "K" and a long, sweeping underline.

Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/ag

Ref: ID# 470989

Enc. Submitted documents

c: Requestor  
(w/o enclosures)