ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 26, 2012

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

OR2012-18894

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# 471888 (COSA File No. W009984).

The City of San Antonio (the "city") received a request for information related to a specified case number. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

Initially, we must address the city's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), within fifteen business days of receipt of the request for information, the governmental body must to submit to this office, among other items, written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, and a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). In this instance, you state the city received the request for information on September 4, 2012. Accordingly, the 15-business-day deadline for this request was September 25, 2012. The city submitted the required information, however, in an envelope postmarked September 28, 2012. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the deadline period). Further, you submitted additional responsive information to this office in an envelope postmarked

October 2, 2012. Consequently, we find the city failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that 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 when another source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.108 of the Government Code, which the city claims, 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. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Nevertheless, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). You inform us the Bexar County District Attorney's Office (the "district attorney's office") asserts a law enforcement interest in the submitted information. Therefore, we will determine whether the city may withhold the information at issue on behalf of the district attorney's office under section 552.108.

We note some of the submitted information, which we have marked, consists of a search warrant signed by a magistrate. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although the district attorney's office claims section 552.108 of the Government Code for this information, we note section 552.108 is a discretionary exception that protects a governmental body's interests and may be waived. *See* ORDs 665 at 2 n.5 (discretionary exceptions generally), 177 at 3 (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not make information confidential for purposes of section 552.022(a)(17). Thus, the department may not withhold the court-filed document we have marked under section 552.108 of the Government Code. However, we note the search warrant signed by a magistrate contains information subject to section 552.130 of the Government Code, which does make information confidential under

the Act.[1] Accordingly, we will consider the applicability of this exception to the information subject to section 552.022. We will also consider the applicability of the remaining exceptions you raise to the information not subject to section 552.022.

First, we address the applicability of section 552.130 of the Government Code to the information subject to section 552.022(a)(17). Section 552.130(a)(2) provides that information relating to a motor vehicle title or registration issued by an agency of this state, or another state or country, is excepted from public release. Gov't Code § 552.130(a)(2). Therefore, the city must withhold the motor vehicle record information we have marked in the magistrate-signed documents under section 552.130 of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information is related to an open case. You have provided a letter from the district attorney's office stating release of the remaining information would interfere with the investigation and prosecution of the case. Based on your representation and the district attorney's office's letter, we conclude section 552.108(a)(1) is generally applicable to the remaining information. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The city must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. The city may withhold the remaining information on behalf of the district attorney's office under section 552.108(a)(1) of the Government Code.

To summarize, the city must release the marked search warrant signed by a magistrate pursuant to section 552.022(a)(17) of the Government Code, with the exception of the motor vehicle information we have marked, which must be withheld under section 552.130 of the

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[1]We also note section 552.130 constitutes a compelling reason to withhold information for purposes of section 552.302 of the Government Code. The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Government Code. With the exception of basic information which must be released, the city may withhold the remaining submitted information under section 552.108(a)(1) 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,

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/som

Ref: ID# 471888

Enc: Submitted documents

c: Requestor
(w/o enclosures)