



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

December 12, 2012

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

OR2012-20002

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# 473648 (COSA File Nos. W010426 and W010903).

The City of San Antonio (the "city") received a request for a specified dash cam video and officer's radio transmittals regarding a specified incident. The city received a second request for any information regarding this same incident. You claim that 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.

Initially, we note the first request is narrower than the second request and only seeks specified dash cam videos and audio recordings. Thus, most of the information responsive to the second request is not responsive to the first request. Accordingly, the city need not release information to the first requestor that is not responsive to her request. Furthermore, we note that a portion of the submitted audio recording is not responsive to either request because the recordings on tracks five through ten do not pertain to the requested incident at issue. This ruling will not address the nonresponsive information, and the city is not required to release it.

Next, we note you have not submitted the requested dash cam video. Thus, to the extent this information existed and was maintained by the city when the first request was received, we assume it has been released. If such information has not been released, then it must be

released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we must address the city's obligations under the Act with respect to the first request. 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(e) of the Government Code, a governmental body is required to submit to this 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. *Id.* § 552.301(e)(1)(A)-(D). In this instance, you state the city received the first request for information on September 23, 2012. Accordingly, the city's fifteen-business-day deadline was October 15, 2012. However, the city did not submit to this office a copy of the specific audio recording requested by the first requestor until October 30, 2012.<sup>1</sup> Accordingly, we find the city has failed to comply with the requirements of section 552.301(e) of the Government Code as to these audio recordings.

Pursuant to section 552.302 of the Government Code, the responsive audio recordings are therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Forth 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). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although you assert this information is excepted under section 552.108 of the Government Code, this section is discretionary in nature. It serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* 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 section 552.108 subject to waiver). Thus, the responsive audio recordings may not be withheld under section 552.108 of the Government Code. Accordingly, this information, which we have indicated, must be released to both requestors pursuant to section 552.302 of the Government Code.

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<sup>1</sup>We note the remaining information submitted as responsive to the second request for information was timely submitted.

Next, we note the remaining information responsive to the second request includes a CR-3 crash report that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c) or (e), accident reports are privileged and confidential. *See id.* § 550.065(b). Section 550.065(c)(4) provides for release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.*

In this instance, the second requestor has provided the city with the requisite pieces of information. Although you seek to withhold this information under section 552.108 of the Government Code, we note information that is specifically made public by statute may not be withheld from the public under any of the exceptions to public disclosure under the Act. *See, e.g.,* Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, the city must release the submitted CR-3 accident report form to the second requestor pursuant to section 550.065(c)(4) of the Transportation Code.

We next turn to your argument under section 552.108 for the information responsive to the second request for information. 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 claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert the submitted information pertains to an open criminal investigation. Based on this representation and our review, we conclude release of the information at issue would interfere with the detection, investigation, or prosecution of a crime. *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 that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we find section 552.108(a)(1) is applicable to the remaining information responsive to the second request.

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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information and the responsive audio

recordings, which we have marked for release, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the city must release the responsive audio recordings to both requestors. The city must also release to the second requestor the submitted CR-3 accident report form pursuant to section 550.065(c)(4) of the Transportation Code. With the exception of basic information, which must be released to the second requestor, the city may withhold the remaining 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](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,



Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/akg

Ref: ID# 473648

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)