



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2013

Ms. Lysia H. Bowling
City Attorney
City of San Angelo
72 West College Avenue
San Angelo, Texas 76903

OR2013-08216

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# 487834.

The San Angelo Police Department (the "department") received a request for the police report for a specified incident. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

You acknowledge, and we agree, the department did not comply with its ten-business-day deadline under section 552.301 of the Government Code in requesting this decision. 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 information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *see also 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). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are

¹Although you raise section 552.101 of the Government Code in conjunction with section 552.108 of the Government Code, we note section 552.101 does not encompass other exceptions in the Act.

at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Although you raise section 552.108 of the Government Code, this section 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 in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to comply with section 552.301, the department has waived its argument under section 552.108, and may not withhold the submitted information on that basis. As you raise no further exceptions to disclosure, the department must release the submitted information.

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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 487834

Enc. Submitted documents

c: Requestor
(w/o enclosures)