



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 22, 2013

Mr. David V. Overcash  
Counsel for City of Anna  
Wolfe, Tidwell & McCoy, L.L.P.  
2591 Dallas Parkway, Suite 205  
Frisco, Texas 75034

OR2013-12585

Dear Mr. Overcash:

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# 493784 (City File No. C03029PIR20130426-03).

The City of Anna, the City of Anna Police Department, and the Collin County Animal Services Department (collectively the "city"), which you represent, received two requests from different requestors for information pertaining to a specified incident. The first requestor seeks photographs and witness statements pertaining to the specified incident. The second requestor seeks police reports, photographs, audio and video recordings, e-mail correspondence, complaint or incident reports, letters, notes, dangerous dog proceeding records, and citations or warnings issued. You claim that the submitted information is exempted 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 city has redacted portions of the submitted information. We understand the city has redacted driver's license information pursuant to section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.<sup>1</sup> However, you have also redacted other information pertaining to

---

<sup>1</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov't Code § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

witnesses. You do not assert, nor does our review of the records indicate, you have been authorized to withhold this information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the city should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

Next, you state that a portion of the requested information was ruled on by this office in Open Records Letter Nos. 2012-13244 (2012) and 2013-01450 (2013). In Open Records Letter No. 2012-13244, we concluded in part, that the city may withhold the information it marked pursuant to section 552.108(a)(1) of the Government Code. In Open Records Letter No. 2013-01450, we concluded in part, that the city may withhold the information it marked pursuant to section 552.108(a)(2) of the Government Code. However, based on your arguments, we understand the circumstances on which the prior rulings were based have changed. Thus, the city may not rely on Open Records Letter Nos. 2012-13244 or 2013-01450 as previous determinations in this instance. *See* ORD 673 (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).

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 that receives a request for information it wishes to withhold under the Act is required to submit to this office within fifteen business days of receiving the 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. Gov't Code § 552.301(e). You state the city received the requests for information on April 26, 2013. Thus, the city's fifteen-business-day deadline was May 17, 2013. However, as of the date of this letter, the city has not submitted to this office a copy of the specific information you state was at issue in Open Records Letter Nos. 2012-13244 or 2013-01450. Accordingly, we find the city failed to comply with section 552.301(e) of the Government Code with respect to this information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the 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 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public); *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) (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). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although you assert the requested 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, this portion of the requested information may not be withheld under section 552.108 of the Government Code. Thus, we have no choice but to order you to release this portion of the requested information in accordance with section 552.302 of the Government Code. We will consider your argument against disclosure of the submitted information, which has not been previously considered and ruled upon by this office.

Section 552.108 of the Government Code provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)–(2). Generally, sections 552.108(a)(1) and 552.108(a)(2) are mutually exclusive. Section 552.108(a)(1) protects information the release of which would interfere with a particular pending criminal investigation or prosecution. In contrast, section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. 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 state the submitted information pertains to a closed criminal investigation that did not result in a conviction or a deferred adjudication, and is, therefore, excepted from disclosure under subsection 552.108(a)(2). However, you also cite subsection 552.108(a)(1) and state the release of the submitted information would interfere with the detection, investigation, and prosecution of crime. Because you have provided this office with contradictory representations, we find you have failed to demonstrate the applicability of section 552.108 to the submitted information. *See Gov't Code § 552.301(e)(1)(A)* (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Therefore, we conclude the city may not withhold the submitted information under section 552.108 of the Government Code. As you raise no further exceptions to disclosure, the city must release the submitted information.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/akg

Ref: ID# 493784

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)