



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 30, 2013

Mr. Charles H. Weir
Assistant City Attorney
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2013-18916

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# 504808 (City File No. W017749).

The City of San Antonio (the "city") received a request for police records related to a named individual during a specified time period. You claim the requested information is excepted from disclosure under sections 552.101 through 552.153 of the Government Code. We have considered your claims.

We note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-15635 (2013). In Open Records Letter No. 2013-15635, we ruled that the city may withhold offense report number 13149782 from disclosure under section 552.108(a)(1) of the Government Code but must release basic information. We have no indication that the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office in the prior ruling, the city must continue to rely on that ruling as a previous determination and withhold or release the previously ruled upon information in accordance with Open Records Letter No. 2013-15635. *See* Open Records Decision No. 673 (2001) (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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the requested information is not encompassed by Open Records Letter No. 2013-15635, we will consider the city's arguments against its release.

We next 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), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) 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. *See* Gov't Code § 552.301(e). In this instance, you state the city received the request for information on August 15, 2013. We note September 2, 2013, was a holiday. This office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the fifteen-business-day deadline was September 6, 2013. As of the date of this letter, you have not submitted to this office written comments stating the reasons why the stated exceptions apply that would allow the remaining information to be withheld or a copy of the specific information requested or representative samples. Consequently, we conclude the city failed to comply with the requirements of section 552.301 with regard to this request.

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 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 where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because the city has failed to comply with the procedural requirements of the Act, the city has waived all of its discretionary exceptions to disclosure. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Although the city raises mandatory exceptions to disclosure, because you have not submitted the remaining requested information for our review, we have no basis for finding any of the information excepted from disclosure or

confidential by law. Thus, we have no choice but to order the remaining requested information released pursuant to section 552.302.

To summarize: To the extent the requested information is identical to the information previously requested and ruled upon by this office in the prior ruling, the city must continue to rely on that ruling as a previous determination and withhold or release the previously ruled upon information in accordance with Open Records Letter No. 2013-15635. The city must release the remaining requested information released pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 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.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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/bhf

Ref: ID# 504808

c: Requestor