



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 22, 2016

Mr. James Kopp  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2016-21453

Dear Mr. Kopp:

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# 627875 (COSA File No. W129496).

The City of San Antonio (the "city") received a request for a specified automobile theft report. You claim the requested information is excepted from disclosure under sections 552.101 through 552.156 of the Government Code. We have considered the exceptions you claim.

Initially, we note the requested information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2016-16088 (2016). In that ruling, we determined the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, to the extent the requested information is identical to the information previously requested and ruled upon, the city must continue to rely on Open Records Letter No. 2016-16088 as a previous determination and withhold the identical information at issue in accordance with that ruling. *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 subject to the previous ruling, we will consider your arguments against disclosure of the requested information.

Next, we must address the city's 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) 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) written comments stating the reasons why the claimed 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). The city received the instant request on July 1, 2016. As of the date of this letter, you have not submitted written comments stating the reasons why the claimed exceptions apply or a copy of the specific information requested or representative samples. Consequently, we find the city failed to comply with the requirements of section 552.301(e) in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 of the Government Code 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). Although you raise discretionary exceptions to disclosure, these sections protect 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). Accordingly, because you have failed to comply with the requirements of the Act, the city has waived its claimed discretionary exceptions to disclosure. *See* ORD 663 at 5. Additionally, although you have also raised mandatory exceptions to disclosure, as you have not submitted the requested information for our review, we cannot find any of the information excepted from disclosure or confidential by law. Therefore, we have no choice but to order the city to release the responsive information in accordance with section 552.302.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon, the city must continue to rely on Open Records Letter No. 2016-16088 as a previous determination and withhold the identical information at issue

in accordance with that ruling. To the extent the requested information is not subject to the previous ruling, the city must release the responsive information in accordance with section 552.302 of the Government Code. If the city believes the information is confidential and may not lawfully be released, the city 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](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,

A handwritten signature in black ink, appearing to read 'Meagan J. Conway', with a stylized flourish at the end.

Meagan J. Conway  
Assistant Attorney General  
Open Records Division

MJC/akg

Ref: ID# 627875

c: Requestor