



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 3, 2016

Ms. Tiffany N. Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001

OR2016-22191

Dear Ms. Evans:

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# 628818 (GC Nos. 23592 & 23597).

The Houston Emergency Center (the "center") received two identical requests from the same requestor for information pertaining to any 9-1-1 calls made in response to a specified automobile accident. You claim 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 must address the center's obligations under the Act. 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. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). You state you received the first request for information on July 12, 2016. You do not inform us the center was closed for business on any days between July 12 and July 26, 2016. Accordingly, as to the first request, you were required to provide the information required by section 552.301(b) by July 26, 2016.

However, the envelope in which the center provided the information required by section 552.301(b) was postmarked July 27, 2016. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the center failed to comply with the procedural requirements mandated by section 552.301 of the Government Code with regards to the first request.

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 requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third-party interests. *See* ORD 630. The center claims section 552.108 of the Government Code for the submitted information. However, this exception is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See* Gov't Code § 552.007; Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, in failing to comply with section 552.301 in regard to the first request, the center has waived its claims under section 552.108 and may not withhold any of the submitted information on this basis in response to the first request. We note in waiving section 552.108 for the first request, the center also waived this claim for this same information with respect to the second request for information. *See* Gov't Code § 552.007 (prohibiting selective disclosure of information); Open Records Decision No. 463 at 1-2 (1987). Accordingly, the center may not withhold any of the submitted information under section 552.108. As no further exceptions to disclosure have been raised, the center 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, 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', written in a cursive style.

Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/akg

Ref: ID# 628818

Enc. Submitted documents

c: Requestor
(w/o enclosures)