



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 17, 2006

Ms. Beverly West Stephens
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2006-00539

Dear Ms. Stephens:

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# 240220.

The City of San Antonio (the "city") received a request for Texas Traffic Safety Program grant agreements and related information. You inform us that the city has released most of the requested information and that the requestor has narrowed his request with regard to other documents. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request). You have submitted information that you claim is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

We note that the city did not fully comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) provides, in part, that the governmental body must submit a copy of the request for information to this office not later than the fifteenth business day after the date of its receipt of the request. *See* Gov't Code § 552.301(e)(1)(B). Section 552.302 provides that if a governmental body fails to comply with section 552.301 in requesting a decision, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the

information. *See id.* § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

In this instance, the city has not submitted a copy of the request for information to this office.¹ Therefore, the submitted information is presumed to be public and must be released, unless there is a compelling reason to withhold any of the information. The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Although you seek to withhold the submitted information under section 552.108 of the Government Code, that 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 generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). The city's claim under section 552.108 is not a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). In failing to comply with section 552.301 of the Government Code, the city has waived section 552.108. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Therefore, the city may not withhold any of the submitted information under section 552.108 of the Government Code. As you claim no other exception to disclosure, the submitted information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

¹Our description of the request is based on other information that the city provided in requesting this decision.

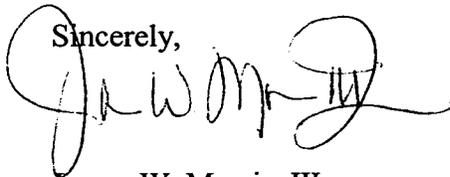
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 240220

Enc: Submitted documents

c: Mr. Brian Collister
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