



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2009

Mr. John E. Chosy
Interim City Attorney
City of Brownsville
P.O. Box 911
Brownsville, Texas 78522

OR2009-03499

Dear Mr. Chosy:

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# 337454.

The City of Brownsville (the "city") received a request for city credit card statements for three specified months.¹ You claim that 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 city's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request a copy of the written request for information, as well as a signed statement or sufficient evidence showing the date the governmental body received the written request. *See* Gov't Code § 552.301(e). As of the date of this letter, however, you have not submitted to this office a copy of the written request for information, or a signed statement or sufficient evidence showing the date the city received the written request. Consequently, we find the city failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal

¹As you have not submitted a copy of the request, we take our description from your brief.

presumption the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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); Open Records Decision No. 319 (1982). Normally, 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. *See Open Records Decision No. 150 at 2* (1977). Section 552.108 of the Government Code, which you claim, 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), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver); *but see Open Records Decision No. 586 at 2-3* (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). In this instance, however, the city has failed to demonstrate a compelling law enforcement interest for non-disclosure under section 552.108. Therefore, the city may not withhold any of the submitted information under section 552.108 of the Government Code. However, we note that section 552.136 is applicable to portions of the submitted information.² Because section 552.136 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address this exception.

Section 552.136 states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136. Therefore, the city must withhold the partial credit card numbers we have marked under section 552.136 of the Government Code. The remaining information must be released to the requestor.

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.oag.state.tx.us/open/index_orl.php, 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

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481* (1987), *480* (1987), *470* (1987).

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Chris Sterner".

Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eb

Ref: ID# 337454

Enc. Submitted documents

c: Requestor
(w/o enclosures)