



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2009

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

OR2009-10027

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# 354201 (SAPD ORR No. 2009-3614).

The San Antonio Police Department (the "department") received a request for a specified offense report. You claim that the requested 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 department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. 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. You inform us that the department received the request for information on June 9, 2009; however, the envelope in which the department's request for a ruling was submitted to this office bears a postmark date of June 26, 2009. *See Gov't Code* § 552.308(b) (prescribing standards for timeliness of action by United States or interagency mail or common or contract carrier). Thus, the department failed to comply with the procedural requirements mandated by section 552.301.

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 the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no

writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although you raise section 552.108 of the Government Code, this exception is discretionary in nature. This serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision No. 177 (1977)(statutory predecessor to section 552.108 subject to waiver); *see also* Open Records Decision No. 665 at 2 n.5 (discretionary exceptions generally). In failing to comply with section 552.301, the department has waived its claim under section 552.108 of the Government Code. Therefore, none of the submitted information may be withheld under this provision. However, we note that section 552.130 of the Government Code is applicable to some of the submitted information. As sections 552.130 can provide a compelling reason to withhold information, we will consider whether any of the submitted information must be withheld under this exception.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The department must withhold the Texas motor vehicle record information we have marked under section 552.130. The remaining information must be released.

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

Sincerely,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 354201

Enc. Submitted documents

cc: Requestor
(w/o enclosures)