



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2009

Mr. Brent A. Money
City Attorney
City of Greenville
Scott, Money & Ray PLLC
P.O. Box 1353
Greenville, Texas 75403-1353

OR2009-11944

Dear Mr. Money:

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# 353466.

The City of Greenville (the "city"), which you represent, received a request for information related to a specified 9-1-1 call.¹ 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We must address the city's obligations under the Act. Under section 552.301(e), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure under the Act is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated 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. *Id.* § 552.301(e). As of the date of this ruling, you have failed to submit a copy of the written request for information.

¹As you have failed to submit a copy of the request for information, we take our description from your brief.

Consequently, we find that 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 comply with the procedural requirements of section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is 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). Generally, a governmental body can overcome the presumption that information is public under section 552.302 by demonstrating that the information is confidential by law or that its disclosure affects third party interests. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver)*. In failing to comply with section 552.301, the city has waived its claim under section 552.108. We therefore conclude that the city must release the information at issue to the requestor. If you believe the information is confidential and may not lawfully be released, you 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.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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 353466

Enc. Submitted documents

c: Requestor
(w/o enclosures)