



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2009

Mr. David Hamilton
Attorney for the City of Reno
3830 Farm Road 195
Paris, Texas 75462

OR2009-12159

Dear Mr. Hamilton:

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# 355813.

The City of Reno (the "city"), which you represent, received a request for a specific incident report.¹ You state that the city will release some information. You claim that the remainder of 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 must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Within fifteen days of receiving the request, the governmental body must submit to this office (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 thereof, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). You explain that the city received the request for information on July 5, 2009; however, as of the date of this ruling, we have not received from you a copy of the written request for information. Accordingly, you have failed to establish that the city complied with the procedural requirements of section 552.301(e).

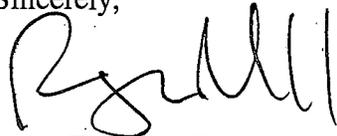
¹As you have not submitted a copy of the written request for information, we take our description of the request from your brief.

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; the governmental body can overcome this presumption only by demonstrating 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 generally exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although you claim an exception to disclosure under section 552.108 of the Government Code, section 552.108 is a discretionary exception that protects a governmental body's interests, and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, your claim under section 552.108 does not provide a compelling reason for non-disclosure, and the city may not withhold any portion of the submitted information under that exception. As you raise no further exceptions against disclosure, the city must release the submitted information to the requestor.²

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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

²We note that the submitted information includes the requestor's driver's license number. Texas driver's license numbers are confidential under section 552.130 of the Government Code, but the requestor has a right of access to his own private information pursuant to section 552.023 of the Government Code. *See* Gov't Code §§ 552.023, .130. Because this information may be confidential with respect to a different requestor, the city must request another ruling if it receives another request for this same information.

Ref: ID# 355813

Enc. Submitted documents

cc: Requestor
(w/o enclosures)