



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September-10, 2009

Ms. Sally Jo Hahn
Attorney
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3291

OR2009-12810

Dear Ms. Hahn:

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# 354877.

The Texas Parks and Wildlife Department (the "department"), received a request for information relating to several named individuals during a specified time period at a specified location. You state you have released certain information. You claim the submitted information is excepted from disclosure under sections 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 Office of the Attorney General (the "OAG"). *See* Gov't Code § 552.304 (providing that a person may submit comments stating why information should or should not be released).

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. Under section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) 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. *See id.* § 552.301(e). In this instance, the department received the request on June 29, 2009, but did not submit a copy of the information requested until July 27, 2009. Consequently, we find that the department failed to comply with the procedural 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 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; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason exists when third-party interests are at stake or when information is confidential under other law. *See* Open Records Decision Nos. 630 at 3 (1994), 150 (1977). You claim an exception to disclosure under section 552.108 of the Government Code; however, section 552.108 is a discretionary exception that may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). However, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason that overcomes the presumption of openness under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). We have received correspondence from the OAG asserting a law enforcement interest in the submitted information. Therefore, we will determine whether the department may withhold the submitted information on behalf of the OAG under section 552.108.

Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The OAG states, and has submitted documentation explaining, that release of the submitted information would interfere with the detection, investigation, or prosecution of a crime. Based on this representation and our review, we conclude the department may withhold the information at issue under section 552.108(a)(1). *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

Ref: ID# 354877

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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