



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2009

Mr. Ricardo Gonzales
City Attorney
City of Edinburg
P.O. Box 1079
Edinburg, Texas 78540

OR2009-14429

Dear Mr. Gonzales:

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# 358311.

The Edinburg Police Department (the "department") received a request for eight categories of information related to: the interrogation, arrest, and incarceration of the requestor's client on or about April 21-22, 2009; the training of the officers involved in those events; and police abuse cases involving the department. You have released the front page of the requested police report. You claim the remainder of this report is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We note you only submitted a representative sample of the responsive police report.¹ However, the requestor also seeks information not contained in this report, including disciplinary and training records of department employees, as well as information regarding police abuse cases. To the extent you seek to withhold any of these additional responsive records from disclosure, you were required to submit this information, or a representative sample, to this office. *See* Gov't Code § 552.301(e)(1)(D). Because you did not submit any other information for our review,

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested police report as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

we presume that to the extent any additional responsive records exist, they have been released. If you have not released this information, you must do so at this time. *See id.* §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of the requested police report.

Next, we must address the department's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(a), (b). In this instance, you state the department received the request for information on July 17, 2009. However, you did not request a ruling from this office until August 7, 2009, more than ten business days after receiving the request for information. You inform this office the requestor agreed to an extension for the department to fulfill the request for information. However, the deadlines prescribed by section 552.301 are fixed by statute and cannot be altered by agreement. *See Attorney General Opinion JM-672 (1987)*; Open Records Decision Nos. 541 at 3 (1990) (obligations of a governmental body under predecessor to Act cannot be compromised simply by decision to enter into contract), 514 at 1-2 (1988). Therefore, regardless of an agreement the department had with the requestor, you were required to seek a ruling by July 31, 2009. Because you did not seek a ruling until August 7, 2009, we find the department 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 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 Gov't Code* § 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). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Although you raise sections 552.103 and 552.108 of the Government Code as exceptions to disclosure of the requested police report, these exceptions are discretionary in nature. They serve only to protect a governmental body's interests and may be waived; as such, they generally do not constitute compelling reasons to withhold information for purposes of section 552.302. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decisions Nos. 665 at n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). By failing to comply with the requirements of

section 552.301, the department has waived its claims under sections 552.103 and 552.108. However, the law enforcement interests of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision Nos. 586 (1991), 469 (1987). In this case, you state the police report relates to a pending criminal prosecution by the Hidalgo County District Attorney. Thus, you were required to provide a representation from the Hidalgo County District Attorney's Office that it seeks to withhold the report because release would interfere with that agency's law enforcement interests. You do not provide any representation from the Hidalgo County District Attorney's Office. Therefore, we conclude you have not demonstrated a compelling reason to withhold the requested report. As you raise no other exceptions to disclosure, the requested police report must be released in its entirety.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 358311

Enc. Submitted documents

cc: Requestor
(w/o enclosures)