



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 13, 2009

Ms. Yvette Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2009-16138

Dear Ms. Aguilar:

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# 361464.

The Corpus Christi Police Department (the "department") received a request for all records pertaining to a specified accident and investigation. You state the department has made some of the requested information available to the requestor. You claim that some of the submitted information is not subject to the Act. You further claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered your arguments and reviewed the submitted information.

You inform us that some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-12773 (2009). In that decision, we ruled that some of the information at issue is not subject to the Act. We further ruled that the department must withhold portions of the information at issue under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and section 772.318 of the Health and Safety Code and under section 552.130 of the Government Code. Furthermore, we ruled that the department may withhold some of the information at issue under section 552.108(a)(1) of the Government Code and release the remaining information. As we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, the department may

continue to rely on that ruling as a previous determination and withhold or release the same information, which you have marked, in accordance with the previous determination.¹ See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we must address the department's procedural obligations under the Act. Section 552.301 of the Government Code prescribes 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. See Gov't Code § 552.301(b). In addition, pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records 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)(1)(A)–(D). You inform us that the department received the present request for information on August 25, 2009. Thus, the department's ten-business-day deadline under section 552.301(b) was September 9, 2009, and the department's fifteen-business-day deadline under section 552.301(e) was September 16, 2009.² However, you did not request a ruling from this office until September 10, 2009, nor did you submit a copy of the requested information until September 22, 2009. Thus, the department has failed to comply with the requirements of section 552.301.

A governmental body's failure to comply with the 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.—Amarillo 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). The presumption

¹As we are able to make this determination, we need not address your arguments against disclosure of this information.

²You inform us that the department was closed for business on September 7, 2009, in observance of Labor Day. This office does not count holidays as business days for the purpose of calculating a governmental body's deadlines under the Act.

that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). You claim the remaining submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 is a discretionary exception to disclosure that a governmental body may waive. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). However, the need of a governmental body, other than the agency that is seeking an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason to withhold information from disclosure. Open Records Decision No. 586 (1991). You inform us, and provide a letter stating, that the Nueces County District Attorney's Office (the "district attorney") asserts a law enforcement interest in the information at issue under section 552.108. Based on this representation, we will consider the district attorney's claim under section 552.108. We further note that sections 552.101, 552.130, and 552.136 can provide compelling reasons for non-disclosure; therefore, we will consider the department's arguments under these exceptions.

Section 552.108(a)(1) of the Government Code 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The district attorney objects to the release of the information at issue because its release would hinder and interfere with its pending criminal prosecution of the matter at issue. *See* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident). Based on this representation and our review, we conclude that release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.³

In summary, the department may continue to rely on Open Records Letter No. 2009-12773 as a previous determination and withhold or release the same information, which you have

³As our ruling is dispositive, we need not address your remaining arguments against disclosure.

marked, in accordance with the previous determination. The department may withhold the remaining submitted information under section 552.108(a)(1) 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, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 361464

Enc. Submitted documents

c: Requestor
(w/o enclosures)