



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 4, 2010

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2010-06356

Dear Mr. Weir:

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# 378276 (COSA File No. 2010-5138).

The San Antonio Police Department (the "department") received a request for information involving (1) a named individual also known by three other names; (2) any individual with a similar name residing at any of five specified addresses; and (3) the named individual and the address of a specified school. You state that some of the requested information either has been or will be released. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We first note that most of the submitted information does not fall within the scope of any of the three categories of requested information. Thus, that information, which we have marked, is not responsive to this request. We also have marked information that was created after the date of the department's receipt of this request. The Act does not require a governmental body to release information that did not exist when it received a request or create responsive information.¹ Thus, the marked information that did not exist when the

¹See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

department received this request is not responsive to the request. This decision does not address the public availability of the marked information that is not responsive to this request, and the department need not release that information in response to this request.²

We next note that the department failed to comply with section 552.301(b) of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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).

You state that the department received this request for information on February 5, 2010; therefore, the department's ten-business-day deadline under subsection 552.301(b) was February 22. The department requested this decision by United States Mail meter-marked March 1. Thus, the department did not comply with section 552.301(b), and the submitted information is therefore presumed to be public under section 552.302. 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). The department seeks to withhold the submitted responsive information under section 552.108 of the Government Code, which is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). The department's claim under section 552.108 is not a compelling reason for non-disclosure under section 552.302 of the Government Code. *See* Open Records Decision No. 586 at 2-3 (1991). In failing to comply with section 552.301 of the Government Code, the department has waived section 552.108 and may not withhold any of the responsive information under that exception. *See* Open Records Decision No. 663 at 5 (1999) (waiver of discretionary exceptions). As the department claims no other exception to disclosure, the submitted responsive information must be released in its entirety.

We note that some of the responsive information appears to be protected by copyright law. A governmental body must allow inspection of copyrighted information unless an exception

²As we are able to make this determination, we need not address your claim under section 552.101 of the Government Code.

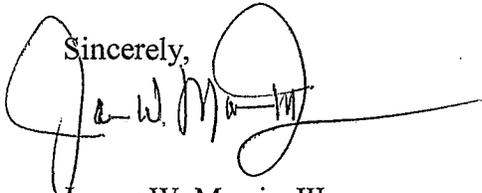
to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

In summary, the responsive information must be released in its entirety, but any copyrighted information may only be released in compliance with copyright law.

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,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/rl

Ref: ID# 378276

Enc: Submitted documents

c: Requestor
(w/o enclosures)