



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2011

Mr. Richard Biblie
Assistant City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78551

OR2011-08531

Dear Mr. Biblie:

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# 421093

The City of Harlingen (the "city") received a request for the Harlingen Police Department Rules and Regulation Manual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.151 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that a portion of the submitted information may have been subject to a previous request for information, in response to which this office issued Open Records Letter No. 2010-03365 (2010). In that decision, we ruled that the city's police department may withhold portions of the department's general manual under section 552.108(b)(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 city may continue to rely on that ruling as a previous determination and continue to treat any previously ruled upon information in accordance with that prior ruling.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,

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

ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information was not previously ruled upon, we will consider your arguments against disclosure.

Next, we must address the city's 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) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). In this instance, you state the city received the request for information on March 30, 2011. Thus, the city's ten-business-day deadline was April 13, 2011. You acknowledge, however, that the city did not request a ruling from this office until April 14, 2011. Thus, we find the city failed to comply with the requirements of section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *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, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You claim exceptions to disclosure under sections 552.108 and 552.111 of the Government Code, which are discretionary and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (governmental body may waive section 552.111), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, your claims under sections 552.108 and 552.111 do not provide compelling reasons for non-disclosure, and the city may not withhold any of the submitted information on the basis of your claims under these sections. However, because sections 552.101 and 552.151 of the Government Code can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. However, you do not cite to any specific law, and we are not aware of any, that makes the submitted information confidential under section 552.101. *See id.* § 552.101. Therefore, the city may not withhold any portion of the submitted information under section 552.101 of the Government Code.

Next, section 552.151 of the Government Code provides as follows:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

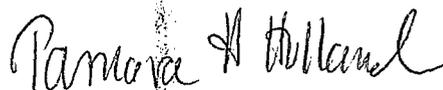
Id. § 552.151. You claim that releasing the submitted information would raise the level of harm police officers face when performing their duties. Upon review of your arguments and the submitted information, we find the city has not adequately demonstrated that release of any portion of the submitted information would subject an employee or officer of a governmental body to a substantial threat of physical harm. Accordingly, the city may not withhold any of the submitted information under section 552.151 of the Government Code.

In summary, the city may rely on Open Records Letter No. 2010-03365 as a previous determination and continue to treat any previously ruled upon information in accordance with that ruling. The remaining information must be released.

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bs

Ref: ID# 421093

Enc. Submitted documents

c: Requestor
(w/o enclosures)