



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 4, 2013

Ms. Nan Rodriguez  
Deputy City Attorney  
City of Temple  
2 North Main Street, Suite 308  
Temple, Texas 76501

OR2013-00216

Dear Ms. Rodriguez:

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# 476220.

The Temple Police Department (the "department") received a request for specified information related to the requestor's client and any department policies governing internal affairs investigations. You state the department has released some of the requested information. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim.

We must address the department's obligations under the Act. Section 552.301 of the Government Code describes the obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen-business-days of receiving the 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* Gov't Code § 552.301(e). You state the department received the present request for information on October 17, 2012. Accordingly, the department's

fifteen-business-day deadline was November 7, 2012. However, as of the date of this letter, the department has not submitted to this office written comments stating the reasons why the raised exceptions apply to the requested information or a copy or representative sample of the specific information requested. Consequently, we find the department failed to comply with the requirements of section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, 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. *See* Open Records Decision No. 150 at 2 (1977). Although you raise sections 552.103 and 552.108 of the Government Code for the requested information, these sections are discretionary in nature. They serve only to protect a governmental body's interests, and may be waived; as such, they do not constitute compelling reasons to withhold information. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the department has waived its claims under sections 552.103 and 552.108, and none of the requested information may be withheld under these sections. You also raise section 552.101 of the Government Code, which can provide a compelling reason to withhold information. However, because the department has not submitted a copy or representative sample of the specific information requested to this office for our review, we have no basis for finding it confidential by law. Thus, to the extent the requested information existed when the request was received, we have no choice but to order the department to release this information in accordance with section 552.302 of the Government Code. If you believe the information at issue is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 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](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 'KLC', with a long horizontal flourish extending to the right.

Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/bhf

Ref: ID# 476220

c: Requestor