



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 25, 2013

Ms. Cecilia Gamez
Lead CSS
Crime Records Bureau
City of McAllen
P.O. Box 220
McAllen, Texas 78501

OR2013-20486

Dear Ms. Gamez:

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# 507072.

The McAllen Police Department (the "department") received a request for information regarding a specified case number. You inform us you have released some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-13190 (2013). In Open Records Letter No. 2013-13190, we determined that with the exception of basic information, the department may withhold the information at issue under section 552.108(a)(1) of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the prior ruling was based. Accordingly, we conclude the department may rely on Open Records Letter No. 2013-13190 as a previous determination and withhold or release the information we have marked in accordance with that ruling. *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 information is or is not excepted from disclosure).

Next, we must address the department's obligations under section 552.301 of the Government Code for the remaining information. Section 552.301 prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. 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 id.* § 552.301(b). You inform us the department received the request for information on September 4, 2013. Accordingly, the department's ten-business-day deadline was September 18, 2013. However, the envelope in which the department submitted its request for a ruling to this office was postmarked September 19, 2013. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code for the remaining submitted information.

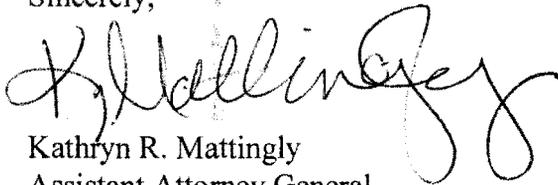
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 of the Government Code results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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). 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). Although the department seeks to withhold the remaining information under section 552.108 of the Government Code, section 552.108 is a discretionary exception to disclosure that protects a governmental body's interest and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the department may not withhold any of the remaining information under section 552.108 of the Government Code. As no further exceptions to disclosure have been raised, the remaining information must be released.

In summary, the department may continue to rely on Open Records Letter No. 2013-13190 and withhold or release the information we have marked in accordance with that ruling. The department must release the remaining information to the requestor.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/som

Ref: ID# 507072

Enc. Submitted documents

c: Requestor
(w/o enclosures)