



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2014

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

OR2014-02030

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# 512895.

The City of Temple (the "city") received a request for all citizen complaints filed against two named officers during the past five years and the dates, charges, and arrests by one of the named officers during the past two years. You state you will release some of the requested information. You claim the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

Initially, we note some of the requested information may have been the subject of a previous ruling from this office. In Open Records Letter No. 2013-11622 (2013), this office ruled the city must withhold the information we marked under section 552.117(a)(2) of the Government Code and the city must withhold the remaining requested information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. We have no indication the law, facts, or circumstances upon which the prior ruling was based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon, the city must continue to rely on Open Records Letter No. 2013-11622 as a previous determination, and withhold or release the previously ruled upon information in accordance with it. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the current request is not encompassed by the prior ruling, we will consider the exception you raise.

Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed 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. Gov't Code § 552.301(e)(1)(A)-(D). You inform us the city received the request for information on November 7, 2013. Accordingly, the department's fifteen-business-day deadline was December 3, 2013. However, as of the date of this letter, you have not submitted to this office a copy or representative sample of the remaining information requested. Accordingly, we conclude the city failed to comply with the requirements of section 552.301.

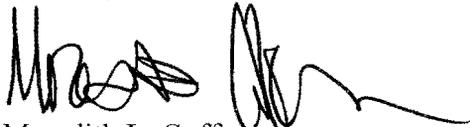
Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption the requested information is public and must be released. Information that is presumed public must be released unless 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Although section 552.101 of the Government Code can provide a compelling reason for nondisclosure of information under section 552.302, we have no basis for concluding that the requested information is excepted under this section because you failed to submit any portion of it to us for our review. Thus, we have no choice but to order the requested information released pursuant to section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon, the city may continue to rely on Open Records Letter No. 2013-11622 as a previous determination, and withhold or release the previously ruled upon information in accordance with it. 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.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,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long, sweeping flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/eb

Ref: ID# 512895

c: Requestor
(w/o enclosures)