



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 16, 2014

Mr. Daniel Ortiz  
Assistant City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2014-12271

Dear Mr. Ortiz:

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# 529183 (Reference No. 14-1026-4292).

The El Paso Police Department (the "department") received a request for information regarding a specified case number.<sup>1</sup> You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

We must address the department's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to subsection 552.301(b), within ten business days after receiving a written request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. Gov't Code § 552.301(b). Further, pursuant to subsection 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records 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

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<sup>1</sup>As you have not submitted a copy of the written request for information, we take our description from your brief to our office.

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 id.* § 552.301(e). The department states it received the request for information on April 15, 2014. The department informs us it is closed for business on Fridays. This office does not count the date the request was received or the date the governmental body was closed as business days for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, you were required to provide the information required by subsection 552.301(b) by May 1, 2014. Moreover, you were required to provide the information required by subsection 552.301(e) by May 12, 2014. However, the envelope containing the department's request for a ruling bears a post-mark of May 7, 2014. *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). Further, as of this date, you have not submitted to this office a copy of the written request for information or a copy or representative sample of the information requested. Accordingly, we conclude the department 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 comply with the procedural requirements of section 552.301 results in the legal presumption that 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 that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Although the department raises section 552.101, which can provide a compelling reason to withhold information, because you have not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure or confidential by law. Thus, we have no choice but to order the requested information released pursuant to section 552.302. 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.

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/>

[url\\_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 that reads "Megan G. Holloway". The signature is written in a cursive style with a large, looping initial "M".

Megan G. Holloway  
Assistant Attorney General  
Open Records Division

MGH/eb

Ref: ID# 529183

c: Requestor  
(w/o enclosures)