



February 26, 2015

Ms. Karon Newby-Cooley
Records Clerk
Pflugerville Police Department
P.O. Box 679
Pflugerville, Texas 78691

OR2015-03879

Dear Ms. Newby-Cooley:

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# 555193 (Pflugerville Ref. No. W001460-112114).

The Pflugerville Police Department (the "department") received a request for information pertaining to a specified incident at the requestor's home. You state you have released some 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 must address the department's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Additionally, under section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving the written request for information (1) general 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

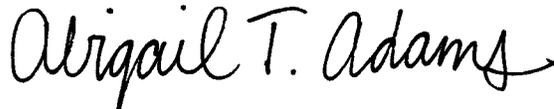
to which parts of the documents. *See id.* § 552.301(e). In this instance, the department received the request for information on November 21, 2014. We understand the City of Pflugerville was closed November 27 and 28, 2014 for the Thanksgiving holiday. This office does not count the date the request 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. The department does not inform us it was closed for business on any of the remaining days at issue. Accordingly, the ten-business-day deadline under section 552.301(b) was December 9, 2014, and the fifteen-business-day deadline under section 552.301(e) was December 16, 2014. However, the department requested a ruling from our office and submitted the information required by section 552.301(e) in an envelope meter-marked December 17, 2014. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the deadline period). Consequently, we find the department failed to comply with section 552.301 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 the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *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. *See* Open Records Decision No. 150 at 2 (1977). Although you assert the requested information is excepted under section 552.108 of the Government Code, this section is discretionary in nature. It serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See Simmons*, 166 S.W.3d at 350 (section 552.108 is not compelling reason to withhold information under section 552.302); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Because the department failed to comply with section 552.301, the department has waived its claim under section 552.108. Thus, the submitted information may not be withheld under section 552.108 of the Government Code. As you raise no further exceptions to disclosure, the submitted 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 that reads "Abigail T. Adams". The signature is written in a cursive, flowing style.

Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

Ref: ID# 555193

Enc. Submitted documents

c: Requestor
(w/o enclosures)