



February 27, 2015

Ms. Allison Bastian  
Assistant City Attorney  
City of Brownsville  
1001 East Elizabeth Street, Suite 234  
Brownsville, Texas 78520

OR2015-03999

Dear Ms. Bastian:

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# 555306.

The City of Brownsville (the "city") received a request for copies of public records that depict an incident which occurred on a specified date on a city bus. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We must address the city's responsibilities under the Act. Section 552.301 of the Government Code prescribes the procedures that 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 that receives a request for information it wishes to withhold under an exception to disclosure is required to submit to this office within fifteen business days of receiving the request (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. Gov't Code § 552.301(e). You state the city received the present request for information on December 5, 2014. As of the date of this letter, you have not submitted for our review a copy or representative sample of the information requested. Consequently, we find the city failed to comply with section 552.301 of the Government Code.

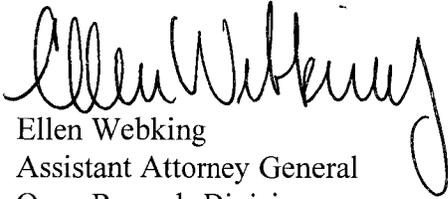
Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal

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) (government 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 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* Open Records Decision No. 150 at 2 (1977). Section 552.103 of the Government Code is a discretionary exception and does not make information confidential. *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); *see also* Open Records Decision No. 663 at 5 (2000) (untimely request for decision results in waiver of discretionary exceptions). Accordingly, the city may not withhold any of the requested information under section 552.103 of the Government Code. We have no choice but to order you to release the requested information in accordance with section 552.302 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/orl\\_ruling\\_info.shtml](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,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/akg

Ref: ID# 555306

c: Requestor