



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 25, 2019

Ms. Cecilia Gamez
Crime Records Bureau
McAllen Police Department
P.O. Box 220
McAllen, Texas 78505

OR2019-05251

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# 758677.

The McAllen Police Department (the "department") received a request for a specified incident report. You state the department has released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We must address the department's obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. 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* Gov't Code. § 552.301(b). 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. *Id.* § 552.301(e)(1)(A)-(D). You state the department received the request for information on January 3, 2019. We understand the department was closed for business on January 21, 2019. Accordingly, the department's ten-and fifteen-business-day deadlines were January 17, 2019, and January 25, 2019, respectively. However, the envelope in which the department submitted to this office the information required by sections 552.301(b) and (e) was postmarked January 30, 2019. *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). Consequently, we find the department failed to comply with the requirements of section 552.301 of the Government Code.

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 unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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). Although you claim section 552.108 of the Government Code for the submitted information, we find you have failed to establish a compelling reason to address the exception you claim. Therefore, the department must release the submitted information.¹

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

¹We note the requestor has a right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a) ("person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office.

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 'KH' followed by a stylized flourish.

Kieran Hillis
Assistant Attorney General
Open Records Division

KH/gw

Ref: ID# 758677

Enc. Submitted documents

c: Requestor
(w/o enclosures)