



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 9, 2022

Mr. Alton Estrada
Assistant City Attorney
City of Amarillo
200 Southeast 3rd Avenue, 4th Floor
Amarillo, Texas 79101

OR2022-27605

Dear Mr. Estrada:

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# 971702 (ORR# 22-1993).

The Amarillo Police Department (the "department") received a request for records related to a specified arrest. The department claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *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). Further, pursuant to section 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 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, and provides documentation demonstrating, the department received the requestor's initial request for the information at issue on June 1, 2022. The department informs us it responded to the requestor within five business days in accordance with the previous determination granted to the department in Open Records Letter No. 2019-05295 (2019). Open Records Letter No. 2019-05295 authorizes the department to withhold certain information from a requestor under section 552.108(a)(1) of the Government Code in specified circumstances without the necessity of first requesting a ruling from this office. The department informs us subsequently, the same requestor requested the same information a second time on June 7, 2022. In response to the second request, the department again responded to the requestor within five business days, relying upon Open Records Letter No. 2019-05295. However, we note Open Records Letter No. 2019-05295 states that the department may rely upon that previous determination only in circumstances in which the department has not previously received a request for the same information from the same requestor. Consequently, the department was not authorized to rely upon Open Records Letter No. 2019-05295 in response to the second request. The department does not inform us it was closed for any business days between June 7, 2022, and June 28, 2022. Accordingly, the department was required to provide the information required by section 552.301(b) by June 21, 2022. Moreover, the department was required to provide the information required by section 552.301(e) by June 28, 2022. On July 7, 2022, the department requested a ruling from this office with respect to a third request received from the same requestor on June 21, 2022, seeking the same information; however, as of the date of this letter, this office has not received a request for a ruling with regard to the second request for information. Accordingly, we conclude the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code with respect to the second request for information.

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). The department claims section 552.108 of the Government Code for the submitted information. However, we find the department has failed to establish a compelling reason to address its claimed exception. Accordingly, the department must release the submitted information to this requestor.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.

¹ We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jxd

Ref: ID# 971702

Enc. Submitted documents

c: Requestor
(w/o enclosures)