



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 14, 2009

Mr. Gregory A. Alicie  
Open Records Specialist  
Baytown Police Department  
3200 North Main Street  
Baytown, Texas 77521

OR2009-12940

Dear Mr. Alicie:

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# 355198.

The Baytown Police Department (the "department") received a request for a video recording of a specified arrest. 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, you have marked portions of the submitted information as not responsive to the request. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

Next, we must address the department's obligations under section 552.301 of the Government Code, which 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 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. *See* Gov't Code § 552.301(e). You state the department received the request on June 25, 2009, and the department was closed on July 3, 2009. Thus, the fifteen-business-day deadline was July 17, 2009. However, the envelope in which you submitted the responsive information is postmarked July 20, 2009. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, the department failed to comply with the procedural requirements mandated by section 552.301.

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 that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *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). Normally, a compelling reason for non-disclosure exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 586 (1991) (governmental body may waive section 552.108), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). In failing to comply with section 552.301, the department has waived section 552.108 and may not withhold the responsive information under that exception. We note portions of the submitted video recording are subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 provides a compelling reason for non-disclosure of information. Thus, we will address the applicability of section 552.130 to the responsive information.

Section 552.130 of the Government Code excepts from disclosure information that relates to "a motor vehicle operator's or driver's license [or] motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(1), (2). We note the submitted recording contains a Texas-issued license plate number. The department must withhold the Texas license plate number within the submitted recording pursuant to section 552.130 of the Government Code. As you raise no further exceptions to disclosure of the remaining responsive information, it must be released.

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (888) 672-6787.

Sincerely,



Karen E. Stack  
Assistant Attorney General  
Open Records Division

KES/eb

Ref: ID# 355198

Enc. Submitted documents

c: Requestor  
(w/o enclosures)