



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 22, 2009

Ms. Jennifer C. Cohen  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2009-15019

Dear Ms. Cohen:

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# 359051 (ORA 09-1241).

The Texas Department of Public Safety (the "department") received a request for information relating to a fatal accident. You state you will make available a portion of the requested information. You claim that 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 representative sample of information.<sup>1</sup>

Initially, we must address the department's obligations 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(a), (b). Pursuant to section 552.301(e), the governmental body must, within fifteen business days of receiving the request, submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 that the department received the request for information on June 23, 2009. Accordingly, you were required to submit your request for a ruling to this office no later than July 7, 2009. Further, you were required to submit the items enumerated under section 552.301(e) to us no later than July 14, 2009. However, you did not request a ruling from this office until August 18, 2009 and did not submit the required documents to this office until August 25, 2009. You state that the department sought clarification from the requestor on July 23, 2009, more than ten business days after the department's receipt of the request. Therefore, the statutory deadlines imposed by section 552.301 were not tolled. *See* Open Records Decision No. 663 at 5 (1999) (providing that statutory deadline is tolled during clarification process). Accordingly, 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 the requirements of 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* Gov't Code § 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). 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. Open Records Decision No. 150 at 2 (1977). Section 552.108 is a discretionary exception to disclosure that protect the governmental body's interests and may be waived by the governmental body. Thus, this exception does not demonstrate a compelling reason to withhold information from the public. *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). Accordingly, the department may not withhold any portion of the information at issue under section 552.108 of the Government Code. However, we note some of the submitted information may be excepted from disclosure under section 552.130 of the Government Code.<sup>2</sup> Since section 552.130 can provide a compelling reason to withhold information, we will consider whether any of the submitted information is excepted under the Act.

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<sup>2</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. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We note that the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, Texas driver's license and motor vehicle record information that pertains to a deceased individual may not be withheld under section 552.130. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); see also *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded”) (quoting Restatement of Torts 2d); see also Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). The department must generally withhold the Texas driver's license and motor vehicle information we have marked under section 552.130 of the Government Code. However, we note that some of the Texas motor vehicle information at issue may relate to a vehicle that was owned by an individual who is now deceased. Accordingly, any license plate number or vehicle identification number that pertains to a deceased individual may only be withheld under section 552.130 if a living person owns an interest in the vehicle at issue. If no living person owns an interest in the vehicle, then the information we have marked relating to that vehicle is not excepted from disclosure and must be released.

We further note that the requestor is the insurance adjuster of one of the parties whose Texas driver's license and motor vehicle information is at issue and, as such, may be that party's authorized representative. Thus, this requestor may have a right of access to a portion of the marked Texas driver's license and motor vehicle record information under section 552.023 of the Government Code. Section 552.023 provides a person or a person's authorized representative a special right of access to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect the person's privacy interests. *Id.* § 552.023. In this instance, it is not clear that the requesting insurance adjuster is the authorized representative of the party at issue. Therefore, we must rule conditionally. If the requesting insurance adjuster is the party's authorized representative, then the requestor has a right of access to that party's information, and it may not be withheld under section 552.130 of the Government Code.<sup>3</sup> If the requesting insurance adjuster is not the party's authorized representative, then the department must withhold all of the marked information under section 552.130 to the extent it pertains to living persons. In either instance, the Texas driver's license and motor vehicle information belonging to

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<sup>3</sup>In that case, should the department receive another request for these same records from a person who would not have a special right of access to this information, the department should resubmit this same information and request another ruling from this office. See Gov't Code §§ 552.301(a), .302.

other living individuals must be withheld under section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.<sup>4</sup>

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, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/jb

Ref: ID# 359051

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note that the remaining information includes social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.