



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 28, 2009

Ms. Dahlia S. Rico  
Records Clerk  
Edinburg Police Department  
1702 South Closner  
Edinburg, Texas 78539

OR2009-15330

Dear Ms. Rico:

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# 359644.

The Edinburg Police Department (the "department") received a request for a specified offense report.<sup>1</sup> You claim portions of the submitted offense report are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.<sup>2</sup> We have considered the exceptions you claim 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 that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Under 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 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,

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<sup>1</sup>As you did not submit a copy of the request, we take our description from your brief.

<sup>2</sup>Although the department does not expressly raise sections 552.101 and 552.130 of the Government Code, you have marked information in the submitted documents that the department seeks to withhold under those exceptions.

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). In this instance, the department did not submit a copy of the original request it received from the requestor. Consequently, we find the department failed to comply with the procedural requirements of section 552.301.

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 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). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). In failing to comply with section 552.301, the department has waived its claim under section 552.108. Therefore, the department may not withhold any portion of the submitted information under section 552.108 of the Government Code. However, as sections 552.101 and 552.130 of the Government Code can provide compelling reasons that overcome the presumption of openness, we will consider these exceptions.

Section 552.130 of the Government Code excepts from disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1), (2). We have marked motor vehicle record information in the submitted report that is subject to section 552.130. Although you have marked other information under this exception, we find that none of the remaining information at issue falls within the scope of section 552.130. We further note that because section 552.130 protects personal privacy, the requestor has a right of access to the requestor's motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023; ORD 481 at 4. Thus, to the extent any of the motor vehicle record information we have marked pertains to the requestor, the department may not withhold this information from the requestor under section 552.130. Otherwise, if the motor vehicle record information we have marked does not pertain to the requestor, the department must withhold this information under section 552.130 of the Government Code.<sup>3</sup>

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<sup>3</sup>As our ruling is dispositive, we do not address your other argument for this information.

In summary, unless the marked information pertains to the requestor, the department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.

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,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/jb

Ref: ID# 359644

Enc. Submitted documents

c: Requestor  
(w/o enclosures)