



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 30, 2009

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2009-18451

Dear Mr. Griffith:

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# 365835.

The City of McKinney (the "city"), which you represent, received two requests from the same requestor for any calls to police regarding a specified traffic accident, any police video of the crash scene, all internal investigative reports not part of the official police reports, the names of the officers who reconstructed the accident the following day, and all accident reconstruction records pertaining to the specified accident. You state that you have released the police officer's crash report pursuant to section 550.065 of the Transportation Code. *See* Transp. Code § 550.065(c)(4) (providing for release of accident report if requestor provides two of following three pieces of information: (1) date of accident, (2) name of any person involved in accident, and (3) specific location of accident). You claim that 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.

Initially we note that you have submitted only the offense report related to the specified traffic accident. Thus, to the extent additional information responsive to the request exists, we assume it has been released. If not, any such information must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We also must address the city'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(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. The city received the first request for information on October 6, 2009, but did not raise section 552.108 of the Government Code as an exception to disclosure until December 1, 2009. Thus, the city failed to comply with the procedural requirements mandated by section 552.301 in raising section 552.108 of the Government Code as an exception to disclosure.

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.—Amarillo 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. Open Records Decision No. 150 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* 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); *but see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). In failing to comply with section 552.301, the city has waived its claim under section 552.108. Therefore, the city may not withhold any of the submitted information under section 552.108. However, because the city timely raised section 552.101, we will address your arguments under that exception.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007, which provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). We note that section 58.007 does not make information relating to traffic offenses confidential. *See id.* §§ 51.02(16) (defining traffic offense), 51.03(a) (delinquent conduct does not include traffic offense), 51.03(b) (conduct indicating need for supervision does not include traffic offense). We find that the requested information involves a traffic offense and, thus, does not fall within the scope of section 58.007(c). *See id.* § 51.03(b). Therefore, we find that the information may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Some of the submitted information is excepted under section 552.130 of the Government Code, which 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.¹ Gov't Code § 552.130(a)(1), (2). The city must withhold the Texas motor vehicle record information we have marked under section 552.130.² The city must release the remaining information to the requestor.

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.

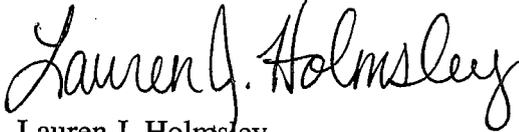
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

¹ This office will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code § § 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

² We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in black ink that reads "Lauren J. Holmsley". The signature is written in a cursive, flowing style.

Lauren J. Holmsley
Assistant Attorney General
Open Records Division

LJH/sdk

Ref: ID# 365835

Enc. Submitted documents

c: Requestor
(w/o enclosures)