



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 3, 2010

Ms. Andrea M. Gardner
City Manager
City of Copperas Cove
P.O. Drawer 14449
Copperas Cove, Texas 76522

OR2010-03120

Dear Ms. Gardner:

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# 372248.

The City of Copperas Cove (the "city") received a request for incident report number 09-4705. You claim the requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we 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) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See Gov't Code § 552.301(b)*. In this instance, you state the city received the request for information on December 7, 2009. Accordingly, the city's ten

¹You also raise section 552.147 of the Government Code as an exception to disclosure, which 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. *See Gov't Code § 552.147(b)*. However, the submitted information does not contain any social security numbers. Therefore, section 552.147 is not applicable to this information.

business-day deadline was December 21, 2009. The city's request for a ruling from this office was postmarked December 23, 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, we find the city failed to comply with the 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 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 by law. Open Records Decision No. 150 (1977). Although you raise section 552.108 of the Government Code as an exception to disclosure of the submitted information, this exception is discretionary in nature. It serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 discretionary). Consequently, the city may not withhold the submitted information pursuant to section 552.108 of the Government Code. We note, however, that because section 552.130 can provide a compelling reason to withhold information, we will address the applicability of this exception.

Section 552.130 of the Government Code 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 section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her own Texas driver's license number under section 552.023 of the Government Code. *See id.* § 552.023; Open Records Decision No. 481 at 4 (1987). Upon review, we find the city must withhold the Texas driver's license number we have marked, which does not belong to the requestor, under section 552.130. As you raise no other exceptions to disclosure, the city must release the remaining submitted information to the requestor.²

²We note that this requestor has a special right of access to some of the information being released that would otherwise be confidential with regard to the general public. *See* Gov't Code § 552.023(a). We further note that 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 a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. Accordingly, if the city receives another request for this information from an individual other than one with a right of access under section 552.023, the city is authorized to withhold the Texas driver's license numbers at issue under section 552.130 without the necessity of requesting an attorney general decision.

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 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 372248

Enc. Submitted documents

cc: Requestor
(w/o enclosures)