



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 17, 2010

Ms. Terri Hamby
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773

OR2010-12461

Dear Ms. Hamby:

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# 390756 (ORA No. 10-1025).

The Texas Department of Public Safety (the "department") received a request for a copy of a named individual's public record and the conclusion of the department's investigation into the named individual's proper identity. You state you released some information to the requestor. You claim the submitted report 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, we must address the department's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Gov't Code § 552.301(b). You state the department received the request for information on May 6, 2010. Thus, the department's ten-business-day deadline to request this decision under section 552.301(b) was May 20, 2010. The department requested this decision on June 15, 2010. You state that on May 11, 2010 the department asked the requestor to provide additional identifying information to determine whether the requestor was eligible to obtain the requested information. You do not assert, however, nor does it appear, the department requested additional information for the purpose of clarifying an

unclear or overly broad request under section 552.222(b) of the Government Code. *See id.* § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). Rather, you assert the department sought additional identifying information from the requestor under section 552.222(c). *See id.* § 552.222(c) (if requested information relates to motor vehicle record, officer for public information may require requestor to provide additional identifying information to determine requestor's eligibility to receive information under chapter 730, Transportation Code). You do not explain, nor can we discern, how a request for additional information under section 552.222(c) has any bearing on a governmental body's deadlines for purposes of section 552.301 of the Government Code. *Cf. City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010) (where governmental body seeks clarification or narrowing of request for information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed). Accordingly, we find the department failed to comply with the requirements of section 552.301 when it did not request a ruling and submit information for our review until June 15, 2010.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of the Act 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. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 at 2 (1977). Section 552.108 is discretionary in nature and serves only to protect a governmental body's interests; as such, it may be waived. *See* Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Consequently, the department may not withhold the submitted report pursuant to section 552.108 of the Government Code. We note, however, section 552.130 of the Government Code is applicable to some of the submitted information.¹ Because this section can provide a compelling reason to withhold information, we will address whether the submitted information must be withheld under this section.

The submitted report contains a Texas state identification number belonging to an individual other than the requestor's client. Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1),

¹The 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).

(2). Therefore, the department must withhold the Texas state identification number we marked under section 552.130. The remaining information must be released.²

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/em

Ref: ID# 390756

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note, as the named individual's attorney, the requestor has a right of access to his client's Texas motor vehicle record information that otherwise would be protected under section 552.130 of the Government Code. See Gov't Code § 552.023(a) (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests).