



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 24, 2011

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

OR2011-01109

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# 406901.

The Little Elm Police Department (the "department") received two requests for incident report number 10-060630. You claim that the requested information 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 section 552.301 of the Government Code. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). You state the department received the first request for information on October 25 2010. Thus, the tenth business day after the receipt of the first request was November 8, 2010. However, the department did not request a ruling from this office until November 11, 2010. *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). Accordingly, the department did not

request a decision from this office within the ten-business-day period prescribed by subsection 552.301(b).

Pursuant to section 552.302 of the Government Code, the submitted information is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *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). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982), 150 at 2 (1977). Although you assert the submitted information is excepted under section 552.108 of the Government Code, this section 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 Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Thus, the submitted information may not be withheld under section 552.108 of the Government Code. However, we note portions of the submitted information are subject to section 552.130 of the Government Code.¹ Because section 552.130 can provide a compelling reason for non-disclosure, we will address the applicability of this section to the submitted information.

Section 552.130 of the Government Code excepts from disclosure information relating to a driver's license issued by an agency of this state. *See* Gov't Code § 552.130(a)(2). Upon review, we find the information we have marked consists of Texas driver's license numbers that falls within the scope of section 552.130. However, we note section 552.130 protects personal privacy. Accordingly, the second requestor has a right of access to his own Texas driver's license number under section 552.023 of the Government Code.² *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). The second requestor, as the stepparent of the minor child, may also have a right of access to his child's Texas driver's license number. *See* Gov't Code § 552.023(a). Therefore, if the second requestor is the guardian or authorized representative of his stepson, the department may not withhold information pertaining to the child from the second requestor under section 552.130. *See id.* § 552.023(a). However, if the second requestor is not the guardian or authorized

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

representative of his stepson, the department must withhold the child's driver's license number from this requestor under section 552.130. In either case, the department must withhold both Texas driver's license numbers from the first requestor under section 552.130 of the Government Code. The remaining information must be released.³

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 406901

Enc. Submitted documents

c: Requestors
(w/o enclosures)

³We note that Open Records Decision No. 684 (2009), which was issued as a previous determination to all governmental bodies, authorizes withholding of 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. In this instance, one of the requestors has a right of access to his own Texas driver's license number. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987). Should the department receive another request for these same records from an individual other than one with a right of access under section 552.023, the department is authorized to withhold the Texas driver's license number at issue without the necessity of requesting an attorney general decision.