



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2011

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78723

OR2011-16460

Dear Mr. Weir:

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# 435638 (COSA File No. W002898).

The San Antonio Police Department (the "department") received a request for information pertaining to a specified automobile accident. You claim the submitted 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 note neither the copy of the requestor's request for information submitted with the responsive documents, nor the e-mail created after the date the department received the instant request, are responsive to the instant request. The department need not release this information, which we have marked, in response to this request, and this ruling will not address it.

Next, 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), 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)*. You state the department received the request for information on August 18, 2011. Thus, we find the department's ten-business-day deadline was

September 1, 2011. *See id.* However, we received the department's request for a ruling in an envelope postmarked on September 2, 2011. *See id.* § 552.308(a) (prescribing standards for timeliness of action by United States or common or contract carrier). Consequently, we find the department failed to comply with the procedural requirements mandated by section 552.301.

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. *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); *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 at 2 (1977). You claim section 552.108 of the Government Code for the submitted information. However, this exception is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, no portion of the submitted information may be withheld under section 552.108 of the Government Code. We note, however, that some of the responsive information may be subject to sections 552.101, 552.130, and 552.136 of the Government Code. Because sections 552.101, 552.130, and 552.136 can provide compelling reasons to withhold information, we will consider these exceptions.¹

The responsive information includes a CR-3 accident report that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential. Section 550.065(b) states, except as provided by subsection (c) or (e), accident reports are privileged for the confidential use of certain specified entities. Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information specified by the statute. *Id.* In this instance, the requestor has provided the department with the date of the accident and the name of a person involved in the accident pursuant to section 550.065(c)(4). Thus, the department must release the accident report, which we have marked, pursuant to section 550.065(c)(4) of the Transportation Code.

Section 552.130 of the Government Code excepts from disclosure “information [that] relates to (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country; [or] (2) a motor vehicle title or registration issued by an agency of this state or another state or country[.]” Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov’t Code § 552.130(a)(1)-(2)). We note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains to a deceased individual may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229, H-917 (1976); Open Records Decision 272 at 1 (1981). The department must generally withhold the information we have marked under section 552.130 of the Government Code. However, we note that some of the motor vehicle record information at issue relates to vehicles that may have been owned by an individual who is now deceased. Accordingly, the information that pertains to the deceased individual’s vehicles, which we have marked in the responsive documents and indicated in the responsive photographs, may only be withheld under section 552.130 if a living person owns an interest in the vehicles at issue. If no living person owns an interest in the vehicles, then the information relating to these vehicles is not excepted from disclosure and must be released. Regardless, the department must withhold the remaining motor vehicle record information we have marked and indicated under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see also id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Upon review, we find the department must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

In summary, the department must release the accident report we have marked pursuant to section 550.065(c)(4) of the Transportation Code. The information that pertains to the deceased individual’s vehicles, which we have marked in the responsive documents and indicated in the responsive photographs, may only be withheld under section 552.130 of the Government Code if a living person owns an interest in the vehicles at issue. If no living person owns an interest in the vehicles, then the information relating to these vehicles is not excepted from disclosure and must be released. Regardless, the department must withhold the remaining motor vehicle record information we have marked and indicated under

section 552.130 of the Government Code. The department must withhold the insurance policy number we have marked under section 552.136 of the Government Code. The department must release the remaining responsive information.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 435638

Enc. Submitted documents

c: Requestor
(w/o enclosures)