



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 17, 2012

Ms. Monique Auchey  
Records Custodian  
City of Leander  
705 Leander Drive  
Leander, Texas 78641

OR2012-20259

Dear Ms. Auchey:

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# 474157 (Leander PIR #12-2714131).

The Leander Police Department (the "department") received a request for information regarding the call log, calls for service, and all supplements from case # LPD120452. You state you have released some of the requested information. You claim that 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 must address the department's obligations under the Act. Section 552.301 of the Government Code describes the obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen-business-days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). You state the department received the request for information on September 28, 2012. Accordingly, the department's fifteen-business-day deadline was October 19, 2012. However, the

department submitted a copy of the written request for information in an envelope postmarked October 22, 2012. *See id.* § 552.308(a) (deadline under Act is met if document bears post office mark indicating time within deadline period). Consequently, we find the department failed to comply with the procedural requirements of section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists for withholding 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, 381-82 (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); *see also* Open Records Decision No. 630 (1994). A compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.108 of the Government Code, this is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). As such, the department's claim under section 552.108 does not constitute a compelling reason to withhold information for purposes of section 552.302, and none of the submitted information may be withheld on that basis. However, section 552.130 of the Government Code can provide a compelling reason to overcome this presumption.<sup>1</sup> Therefore, we will address the applicability of section 552.130 to the submitted information.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130. Upon review, we find a portion of the submitted information consists of motor vehicle record information. Therefore, the department must generally withhold the information we have marked under section 552.130 of the Government Code.

We note, however, the requestor in this instance represents the insurance provider for one of the individuals listed in the submitted information. As such, the requestor, if acting as the individual's authorized representative, has a right of access to her insured's motor vehicle record information. *See id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect

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<sup>1</sup>The 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).

person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or individual's authorized representative asks governmental body to provide information concerning that individual). In this instance, it is not clear that the requestor is acting as the individual's authorized representative. Therefore, we must rule conditionally. To the extent the requestor has a right of access under section 552.023 to the insured's motor vehicle record information, the department must release the insured's information we have marked to the requestor. To the extent the requestor does not have a right of access under section 552.023, the department must withhold the marked motor vehicle record information under section 552.130 of the Government Code. The remaining information must be released.

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](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,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/eb

Ref: ID# 474157

Enc. Submitted documents

c: Requestor  
(w/o enclosures)