



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 28, 2013

Ms. Evelyn Njuguna  
Staff Attorney  
City of Houston Police Department  
1200 Travis  
Houston, Texas 77002-6000

OR2013-03447

Dear Ms. Njuguna:

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# 480374 (OR# 12-7387).

The Houston Police Department (the "department") received a request for information pertaining to a specified report. 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.

We must address the department's responsibilities under the Act. Section 552.301 of the Government Code prescribes the procedures 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, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(b). You state the department received the request on December 18, 2012. However, upon review of the written request, we find the requestor made her initial request by e-mail after business hours on November 29, 2012. You provide no explanation as to why this e-mail does not constitute a valid request. Accordingly, we consider the request to have been received by the department on November 30, 2012, and the department was required to request a decision from this office by December 14, 2012. However, the department did not request a ruling until December 20, 2012. *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 department failed to comply with the requirements of section 552.301 in asking this office for a ruling.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption

the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information sufficient to overcome this presumption. *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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Gov't Code* § 552.007; Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not provide a compelling reason for non-disclosure. Accordingly, the department may not withhold the submitted information under section 552.108 of the Government Code. As you raise no other exceptions, the submitted information must be released.<sup>1</sup>

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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

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<sup>1</sup>We note the requestor has a right of access to her own motor vehicle record information. *See Gov't Code* § 552.023. If the department receives another request for this same information from a different requestor, it is authorized to withhold the requestor's driver's license number under section 552.130(a)(1) of the Government Code without requesting a decision from this office, but it must provide notice to the new requestor. *See id.* § 552.130(c)–(e).

Ref: ID# 480374

Enc. Submitted documents

c: Requestor  
(w/o enclosures)