



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 2, 2013

Mr. William R. Pemberton
Counsel for the City of Crockett
Attorney at Law
P.O. Box 1112
Crockett, Texas 75835

OR2013-05252

Dear Mr. Pemberton:

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# 482821.

The City of Crockett (the "city"), which you represent, received a request for information pertaining to a specified incident.¹ You state the city has released some of the submitted information. 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 city's procedural obligations under the Act. Section 552.301 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(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records 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

¹As you have not submitted a copy of the request for information, we take our description from your brief. We note you have provided the name of the requestor.

to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). In this instance, you state the city received the request for information on January 15, 2013. However, as of the date of this letter, you have not submitted a copy of the written request for information. Consequently, we find the city failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists 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, 381-82 (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). Generally, 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). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and is not a compelling reason to withhold information. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 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). In failing to comply with section 552.301, the city has waived its claims under section 552.108. Accordingly, the submitted information must be released.²

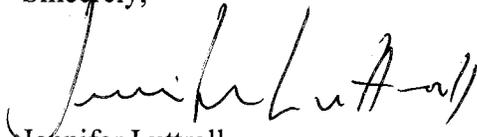
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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.

²We note the information being released contains the requestor's driver's license information and social security number, to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code §§ 552.023(a), .130, .147; Open Records Decision No. 481 at 4 (1987). Section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b). Thus, if the city receives another request for this same information from a person who does not have such a right of access, the city may redact the requestor's driver's license information pursuant to section 552.130(c) and the requestor's social security number under section 552.147(b) without requesting a decision under the Act.

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,

A handwritten signature in black ink, appearing to read "Jennifer Luttrall". The signature is fluid and cursive, with the first name "Jennifer" written in a larger, more prominent script than the last name "Luttrall".

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 482821

Enc. Submitted documents

c: Requestor
(w/o enclosures)