



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2013

Mr. Jeffrey T. Ulmann
Counsel for the City of Bartlett
McKamie, Krueger, & Knight, LLP
223 West Anderson Lane, Suite A105
Austin, Texas 78752

OR2013-15316

Dear Mr. Ulmann:

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# 498458.

The City of Bartlett (the "city"), which you represent, received a request for (1) all documents relating to any business trips taken by a named person from January 1, 2012, to the date of the request; (2) all bills and receipts pertaining to the remodel of the city's town hall; (3) all police reports pertaining to a specified robbery; (4) any insurance claims made by the city in connection with the specified robbery; (5) all e-mails sent or received by two named persons from their city e-mail accounts; (6) all public information requests, other than those submitted by the requestor, from January, 2013, to the date of the instant request; and (7) certain documents previously ruled on by this office in response to previous public information requests. You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request. This ruling does not address the public availability of

non-responsive information, and the city is not required to release non-responsive information in response to this request.¹

Next, we note you have only submitted information pertaining to two categories of the request. To the extent information responsive to the remainder of the request existed on the date the city received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

You state you will release a portion of the requested information, which was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-09340 (2013). In Open Records Letter No. 2013-09340, we determined the information at issue must be released. We have no indication there has been any change in the law, facts, or circumstances on which the prior ruling was based. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the city must rely on Open Records Letter No. 2013-09340 as a previous determination and release the identical information in accordance with that ruling.² *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). With respect to the information that was not previously ruled upon in Open Records Letter No. 2013-09340, we will address your arguments against disclosure.

Next, we must address the city's obligations under section 552.301 of the Government Code. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See* Gov't Code § 552.301. Pursuant to section 552.301(b) of the Government Code, 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 id.* § 552.301(b). You inform us the city received the request for information on June 10, 2013. Accordingly, the city's ten business-day-deadline was June 24, 2013. The envelope in which the city originally submitted its request for a ruling from this office bears a postmark of June 24, 2013. You explain, however, and the submitted information reflects, the original submission was returned for insufficient postage and the city again mailed the required information to this office in an envelope bearing a postmark of June 26, 2013. Section 552.308 of the Government Code provides when a submission within a specified time period is required

¹As we are able to make this determination, we need not address your arguments against disclosure of this information.

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

under the Act, the time requirement is met if the submission is sent by first class mail “with postage . . . prepaid” and the postmark date is within the required time period. *See id.* § 552.308. Because the city did not submit the information required by section 552.301(b) within the required time period, we find the city failed to comply with the requirements of section 552.301.

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 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.—Forth Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-81 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the 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). You raise section 552.108 of the Government Code for the responsive information; however, this is a discretionary exception and may be waived. As such, the city’s claim under this section is not a compelling reason to overcome the presumption of openness. *See* Gov’t Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the city may not withhold any of the responsive information under section 552.108. However, we note some of the responsive information is subject to section 552.130 of the Government Code.³ Because this exception can provide a compelling reason to withhold information, we will address the applicability of section 552.130 to the responsive information.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license or driver’s license issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130(a)(1). The city must withhold the driver’s license information we have marked under section 552.130 of the Government Code.⁴

In summary, for the requested information that is identical to the information previously requested and ruled upon by this office, the city must rely on Open Records Letter No. 2013-09340 as a previous determination and release the identical information in

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to 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* Gov’t Code § 552.130(d), (e).

accordance with that ruling. The city must withhold the driver's license information we have marked under section 552.130 of the Government Code. The remaining responsive information must be released.⁵

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 498458

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵We note the remaining information contains a social security number. 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. Gov't Code § 552.147(b).