



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2013

Ms. Ysmael D. Fonseca
Counsel for the City of Mission
Guerra, Leeds, Sabo & Hernandez, P.L.L.C.
10213 North Tenth Street
McAllen, Texas 78504

OR2013-21648

Dear Ms. Fonseca:

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# 508199.

The City of Mission (the "city"), which you represent, received two requests for all records pertaining to the 2011 arrest of a named individual. You state you are releasing some information. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received comments submitted by the second requestor. *See* Gov't Code § 552.304 (interested party may submit comments explaining why information should or should not be released).

Initially, we understand the second requestor to argue the city failed to comply with section 552.301 of the Government Code. Section 552.301(d) of the Government Code requires that a governmental body must provide the requestor with (1) a written statement the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. *Id.* § 552.301(d). Pursuant to section 552.302, a governmental body's failure to timely provide the requestor with a copy of its written communication to this office results in the presumption that the information is public. The city states it received the second request for information on October 16, 2013. Thus, the city's ten-business-day deadline

under subsection 552.301(d) was October 30, 2013. The envelope in which the city sent its request for a ruling is post-marked October 24, 2013. *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). Additionally, the city's brief to this office contains a notation that the second requestor was copied on the brief on that date. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Records Decision No. 522 at 4 (1990). Based on the submitted information, we find the city complied with the procedural requirements of section 552.301(d) in copying the second requestor on the correspondence requesting this ruling.

Next, we note the submitted photographs are part of a completed criminal investigation subject to section 552.022(a)(1) of the Government Code, which provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by section 552.108." Gov't Code § 552.022(a)(1). Pursuant to section 552.022(a)(1), a completed investigation is expressly public unless it is either excepted under section 552.108 of the Government Code or is made confidential under the Act or other law. You raise section 552.103 of the Government Code for the submitted information. However, section 552.103 is a discretionary exception that protects a governmental body's interests and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the submitted information may not be withheld under section 552.103 of the Government Code. We note portions of the photographs are subject to section 552.130 of the Government Code.¹ Because section 552.130 makes information confidential under the Act, we will address the applicability of this section to the submitted information.

Section 552.130 of the Government Code provides information relating to a motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(2). We conclude the city must withhold the portions of the submitted photographs that depict discernible license plate numbers under section 552.130 of the Government Code.² The city must release the remaining information.

¹The 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).

²We note section 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* 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).

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 508199

Enc. Submitted documents

cc: 2 Requestors
(w/o enclosures)