



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 12, 2013

Mr. C. Tyler Atkinson  
Assistant City Attorney  
Office of the City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3d Floor  
Fort Worth, Texas 76102

OR2013-21668

Dear Mr. Atkinson:

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# 508322 (FW PIR Nos. W029031, W029035, W029180, W029208).

The City of Fort Worth and the Fort Worth Police Department (collectively, the "city") received four requests for information regarding the investigation of a specified motor vehicle accident. You inform us you have released some of the requested information to the requestors. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You state a portion of the responsive information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-16254 (2013). In Open Records Letter No. 2013-16254, we determined the city may withhold the submitted photographs under section 552.108(a)(1) of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the prior ruling was based. Accordingly, we conclude the city may rely on Open Records Letter No. 2013-16254 as a previous determination and withhold the submitted photographs in accordance with that ruling.<sup>1</sup> See Open Records Decision No. 673

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(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).

Next, we must address the city's 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. *See* Gov't Code § 552.301. Pursuant to subsection 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). In regards to the first request, which you submitted to this office on October 4, 2013, you raised section 552.101 within the ten-business-day time period as required by subsection 552.301(b), but you did not raise section 552.108 within that time. Thus, in regards to the first request, the city failed to comply with the requirements mandated by subsection 552.301(b) as to its argument under section 552.108 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 of the Government Code 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. *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); *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). Although the city asserts the information at issue is excepted under section 552.108 of the Government Code, section 552.108 is discretionary in nature. It serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to comply with section 552.301 in response to the first request, the city waived its claim under section 552.108 with respect to any remaining information responsive to the first request. We note in waiving its section 552.108 claim for the remaining information responsive to the first request, the city also waived this claim for this same information with respect to the remaining requests for information. *See* Gov't Code § 552.007 (prohibiting selective disclosure of information); Open Records Decision No. 463 at 1-2 (1987). However, the need of a governmental body other than the agency that is seeking an open records decision to withhold information under section 552.108 of the Government Code can provide a compelling reason to withhold information from disclosure. *See* Open Records Decision No. 586 at 2-3 (1991). In this instance, you inform us, and provide documentation demonstrating, the Tarrant County

District Attorney's Office (the "district attorney's office") asserts a law enforcement interest in the information at issue. Therefore, we will determine whether the city may withhold this information on behalf of the district attorney's office under section 552.108. Further, we will also consider your timely raised argument under section 552.101 of the Government Code.

Next, we note the information you seek to withhold includes blood specimen test results. Section 724.018 of the Transportation Code provides that, on the request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen must be made available to that person or the person's attorney. Transp. Code § 724.018. In this instance, one of the requestors may be an authorized representative of the person who provided the blood specimen at the request of a peace officer. Therefore, if this requestor, whom we have indicated, is acting as an authorized representative of the individual at issue, he has a right of access to the blood specimen test results. Although the district attorney's office seeks to withhold this information under section 552.108 of the Government Code, the exceptions to disclosure found in the Act generally do not apply to information that other statutes make public. *See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989)*. Therefore, if the requestor we have indicated is acting as an authorized representative of the individual at issue, the city must release to this requestor the submitted blood specimen test results, which we have marked, pursuant to section 724.018 of the Transportation Code. If this requestor is not acting as an authorized representative of the individual at issue, we will consider your arguments against disclosure of this information along with the remaining information.

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide documentation demonstrating, the district attorney's office objects to the release of the remaining information because it relates to a pending criminal prosecution. We note, however, the submitted information includes a DIC-24 statutory warning and a DIC-25 notice of suspension. The city provided copies of these forms to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of a crime. Accordingly, the city may not withhold the DIC-24 and DIC-25 forms under section 552.108(a)(1) of the Government Code. However, based upon your representations and our review, we conclude section 552.108(a)(1) is applicable to the remaining information, and the release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic information and the DIC-24 and DIC-25 forms, you may withhold the remaining information from disclosure based on section 552.108(a)(1) of the Government Code.<sup>2</sup>

We understand you to assert the basic information and the DIC-24 and DIC-25 forms are protected by common-law privacy. Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find no portion of the basic information or the DIC-24 and DIC-25 forms is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the city may not withhold any of the basic information or the DIC-24 and DIC-25 forms under section 552.101 of the Government Code on the basis of common-law privacy.

We note the DIC-24 and DIC-25 forms contain a driver's license number that is subject to section 552.130 of the Government Code.<sup>3</sup> 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). However, we note one of the requestors may be an authorized representative of the individual to whom the marked information pertains. Because section 552.130 protects personal privacy, this requestor has a right of access to the individual's driver's license number if he is the individual's authorized representative. See *id.* § 552.023(a). Thus, if the requestor we have indicated is an authorized representative of the individual at issue, the driver's license number we have marked may not be withheld under section 552.130 and must be released to this requestor. See Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). If the requestor we have indicated is not an authorized representative of the individual at issue, the city must withhold from this requester the marked driver's

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

<sup>3</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, 480 (1987), 470 (1987).

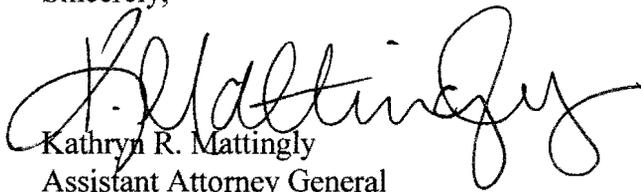
license number under section 552.130 of the Government Code. In either case, the city must withhold the marked driver's license number from the remaining requestors under section 552.130 of the Government Code.<sup>4</sup>

In summary, the city may rely on Open Records Letter No. 2013-16254 as a previous determination and withhold the submitted photographs in accordance with that ruling. If the requestor we have indicated is acting as an authorized representative of the individual at issue, the city must release to this requestor the submitted blood specimen test results, which we have marked, pursuant to section 724.018 of the Transportation Code. With the exception of the basic information and the DIC-24 and DIC-25 forms, which the city must release, the city may withhold the remaining information from disclosure based on section 552.108(a)(1) of the Government Code. In releasing the DIC-24 and DIC-25 forms, the city must generally withhold the driver's license number we have marked under section 552.130 of the Government Code; however, if the requestor we have indicated is an authorized representative of the individual whose driver's license number is at issue, the city must release it to that requestor.

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](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

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<sup>4</sup>We 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).

Ref: ID# 508322

Enc. Submitted documents

c: 4 Requestors  
(w/o enclosures)