



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 19, 2014

Ms. Cheryl Elliott Thornton  
Assistant County Attorney  
County of Harris  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2014-04652

Dear Ms. Thornton:

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# 517472 (C.A. File No. 13PIA0661).

The Harris County Pollution Control Department (the "department") received a request for "reports, violations, complaints [and] environmental concerns" from January 1, 2010 to the date of the request pertaining to a named chemical plant. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that 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). In this instance, you state the department received the request for information on December 18, 2013. You inform us department offices were closed on December 24, 2013, December 25, 2013, and January 1, 2014. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the department's ten-business-day deadline was January 6, 2014. The

envelope in which the department originally submitted its request for a ruling was returned to the department for missing postage and the department again mailed the required information to this office in an envelope bearing a postmark of January 13, 2014. Section 552.308 of the Government Code provides, when a submission within a specified time period is required 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 department did not submit its request for a ruling within the required time period, we find the department failed to comply with the procedural requirements of section 552.301 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 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). Sections 552.103 and 552.111 of the Government Code are discretionary in nature; they serve only to protect a governmental body's interests. As such, the department's claims under these exceptions are not compelling reasons to overcome the presumption of openness. *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); 663 at 5 (1999) (governmental body may waive section 552.111); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). In failing to comply with section 552.301, the department has waived its claims under sections 552.103 and 552.111 of the Government Code. Therefore, none of the information at issue may be withheld under these exceptions. However, we note portions of the information at issue are subject to sections 552.130 and 552.137 of the Government Code,<sup>1</sup> which can provide compelling reasons to overcome the presumption of openness. Accordingly, we will address these exceptions.

Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit or 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). Upon

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

review, we find the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.<sup>2</sup>

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The submitted information contains personal e-mail addresses that are not a type excluded by subsection (c). Therefore, the department must withhold the personal e-mail addresses under section 552.137 of the Government Code unless the owners affirmatively consent to their disclosure.<sup>3</sup>

We also note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The department must withhold the e-mail addresses of members of the public under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure. The remaining information must be released; however, any information subject to copyright may only be released in accordance with copyright law.

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.

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<sup>2</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 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). *Id.* § 552.130(d), (e).

<sup>3</sup>Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting a decision from this office.

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,



Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/eb

Ref: ID# 517472

Enc. Submitted documents

c: Requestor  
(w/o enclosures)