



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2014

Ms. Michele Freeland
Legal Assistant
Office of General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2014-08423

Dear Ms. Freeland:

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# 523093 (DPS PIR# 14-0823).

The Texas Department of Public Safety (the "department") received a request for records regarding a specified arrest of the requestor.¹ You state you have released some of the requested information to the requestor. You claim that 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.

Initially, we must address the department'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) 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

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

request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1). In this instance, you state the department received the request for information on February 27, 2014. However, as of the date of this letter you have failed to submit a copy of the written request for information. Consequently, we find the department 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). Although the department seeks to withhold the submitted information under section 552.108 of the Government Code, section 552.108 is a discretionary exception to disclosure that protects a governmental body's interest and may be waived. *See Simmons*, 166 S. W.3d at 350 (section 552.108 is not compelling reason to withhold information under section 552.302); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 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). Accordingly, the department may not withhold any of the submitted information under section 552.108. However, because section 552.130 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted information.²

Section 552.130 of the Government Code 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)(1)-(2). Accordingly, we find the department must withhold the motor vehicle

²The 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).

record information we have marked under section 552.130 of the Government Code. As no further exceptions to disclosure are raised, the remaining information must be released.³

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 523093

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note that because the requestor has a right of access to some of the information being released in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.