



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2014

Ms. Janet L. Kellogg
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2014-13724

Dear Ms. Kellogg:

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# 532306 (Police Department File Numbers: KPri5; KSab1).

The Corpus Christi Police Department (the "department") received two requests for information pertaining to a vehicle collision. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act. Section 552.301 of the Government Code 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(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See Gov't Code* § 552.301(b). The department received the first request for information on May 14, 2014. You inform us the department was closed May 26, 2014. We note 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 ten-business-day deadline for the first request was May 29, 2014. However, the department requested a ruling from our office in an envelope meter-marked June 3, 2014. *See id.* § 552.308(a) (deadline under the

¹Although you do not explicitly raise section 552.130 of the Government Code in your brief, we understand you to raise this exception based on your markings.

Act is met if document bears post office mark indicating time within the deadline period). Consequently, we find the department failed to comply with 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 procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released, unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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 (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); Open Records Decision No. 630 (1994). Normally, a compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). You assert the requested information is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 is a discretionary exception to disclosure and may be waived. *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). Thus, in failing to comply with section 552.301 with respect to the first request, the department has waived its claim under section 552.103, and may not withhold any information responsive to the first request on this basis. We note in waiving its section 552.103 claim for the information responsive to the first request, the department also waived this claim for this same information with respect to the second request for information. *See Gov't Code* § 552.007 (prohibiting selective disclosure of information); Open Records Decision No. 463 at 1-2 (1987). Accordingly, the department may not withhold any of the information under section 552.103. However, because sections 552.101 and 552.130 of the Government Code make information confidential, they provide compelling reasons to overcome the presumption of openness. Thus, we will consider the applicability of these exceptions to the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses information made confidential by other statutes, such as section 143.090 of the Local Government Code. You state that the city is a civil service city under chapter 143 of the Local Government Code. Section 143.090 provides as follows:

A department, [the Fire Fighters' and Police Officers' Civil Service Commission], or municipality may not release a photograph that depicts a police officer unless:

- (1) the officer has been charged with an offense by indictment or by information;
- (2) the officer is a party in a civil service hearing or a case before a hearing examiner or in arbitration;
- (3) the photograph is introduced as evidence in a judicial proceeding;
or
- (4) the officer gives written consent to the release of the photograph.

Local Gov't Code § 143.090. You state some of the submitted photographs depict department police officers. You inform us none of the police officers depicted in the submitted photographs have provided the department with written consent regarding the release of the photographs. You further inform us none of the remaining exceptions under section 143.090 are applicable. Therefore, the department must withhold the photographs we have indicated under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code. You further state the submitted video recordings contain visual images of police officers. However, the legislative history for section 143.090 indicates the legislature did not intend to extend the statute's protection to video recordings. Hearings on H.B. 2006 Before the House Comm. on Urban Affairs, 82nd Leg., R.S. (March 30, 2011) (bill's author, Rep. Bonnen, explained statute's protection limited to photographs and does not protect video). Accordingly, we find none of the remaining information is subject to section 143.090 of the Local Government Code and may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). We note the submitted information contains motor vehicle record information we have marked and indicated within the documents, photographs, and videos. However, the first requestor is the authorized representative for the driver of the first vehicle, and the second requestor is the authorized representative for the driver and passenger of the second vehicle. Because section 552.130 protects personal privacy, we note the requestors have a right of access to their respective clients' motor vehicle record information. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (privacy theories not implicated when individuals requests information concerning themselves). Upon review, we find the department must withhold the remaining motor vehicle record information we have marked under section 552.130 of the Government Code from both requestors; however the department must release the motor vehicle record information to each requestor that relates to their respective clients.

In summary, the department must withhold the photographs we have indicated under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code. The department must withhold the motor vehicle record information we have marked within the documents and indicated in the photographs and videos under section 552.130 of the Government Code, but must release the motor vehicle record information to each requestor that relates to their respective clients. The department must release the remaining information.²

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,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/dls

Ref: ID# 532306

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

²We note the information being released 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 officer under the Act. Gov't Code § 552.147(b). We note, however, the second requestor has a right of access to his client's social security number. *See generally id.* § 552.023. Accordingly, the department may withhold from the first requestor the social security number of the driver of the second vehicle, but may not withhold this social security number from the second requestor on that basis.