



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2014

Ms. Monique Campbell
Records Custodian
Leander Police Department
705 Leander Drive
Leander, Texas 78641

OR2014-18892

Dear Ms. Campbell:

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# 540127.

The Leander Police Department (the "department") received a request for information related to a specific incident. You state you will release some information with redactions pursuant to section 552.130 of the Government Code.¹ You claim the remaining 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.

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

¹You state you will redact information subject to section 552.130 of the Government Code pursuant to the previous determination issued in Open Records Decision No. 684 (2009). However, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in section 552.130(a) of the Government Code, without the necessity of seeking a decision from the attorney general. If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See Gov't Code § 552.130(d), (e). Thus, the statutory amendment to section 552.130 of the Government Code supercedes Open Records Decision No. 684. Therefore, a governmental body may redact information subject to section 552.130(a) only in accordance with section 552.130, not Open Records Decision No. 684.

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). In this instance, you state the department received the request for information on July 29, 2014. Accordingly, the department's ten-business-day deadline was August 12, 2014. However, the department requested a ruling from our office in an envelope meter-marked August 13, 2014. *See id.* § 552.308(a) (deadline under the 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 the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *see also 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). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Although you raise section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; 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 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to comply with section 552.301, the department has waived its argument under section 552.108, and may not withhold the information on this basis. However, the documents include information subject to section 552.130 of the Government Code, which provides a compelling reason that overcomes the presumption of openness.² Accordingly, we will consider this exception to disclosure.

Section 552.130 of the Government Code 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). Upon review, we find the department must withhold the motor vehicle record information we have marked under

²The 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 (1987), 480 (1987), 470 (1987).

section 552.130 of the Government Code. As no other exceptions to disclosure have been 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,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/dls

Ref: ID# 540127

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³The information being released contains a social security number subject to section 552.147 of the Government Code. 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 the requestor has a special right of access to some of the information being released. *Id.* § 552.023. Accordingly, if the department receives another request for this same information from a different requestor, the department must against seek a ruling from this office.