



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 9, 2014

Mr. Dusty Gallivan  
County Attorney  
Ector County  
300 North Grant, Room 201  
Odessa, Texas 79761

OR2014-22267

Dear Mr. Gallivan:

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# 546211.

The Ector County Attorney's Office (the "county attorney's office") received a request for information pertaining to a specified automobile accident. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the county attorney's office'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). Additionally, under section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the request (1) general 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

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<sup>1</sup>Although you also raise section 552.101 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume you no longer assert this exception. See Gov't Code §§ 552.301, .302.

date the governmental body received the written 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. *See id.* § 552.301(e). In this instance, the county attorney's office received the request for information on September 4, 2014. Accordingly, the ten-business-day deadline under section 552.301(b) was September 18, 2014, and the fifteen-business-day deadline under section 552.301(e) was September 25, 2014. However, the county attorney's office requested a ruling from our office and submitted the information required by section 552.301(e) in an envelope meter-marked October 1, 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 county attorney's office 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 county attorney's office has waived its argument under section 552.108, and may not withhold the information on this basis. However, the submitted information contains information subject to section 552.130 of the Government Code, which provides a compelling reason that overcome the presumption of openness.<sup>2</sup> Accordingly, we will consider that exception to disclosure.

Next, we note the submitted information includes a CR-3 accident report completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of Transportation Code states, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). In this instance, the requestor has provided the county attorney's office with

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<sup>2</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 (1987), 480 (1987), 470 (1987).

two of the three pieces of required information pursuant to section 550.065(c)(4). Accordingly, the county attorney's office must release the submitted CR-3 accident report to the requestor under section 550.065 of the Transportation Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country. Gov't Code § 552.130(a). Thus, the county attorney's office must withhold the motor vehicle record information we have marked and indicated under section 552.130. The county attorney's office must release the remaining submitted information.<sup>3</sup>

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,



Abigail T. Adams  
Assistant Attorney General  
Open Records Division

ATA/ac

Ref: ID# 546211

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note the information being released contains social security numbers 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).