



February 18, 2015

Mr. Daniel Ortiz
Assistant City Attorney
Office of the City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2015-03180

Dear Mr. Ortiz:

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# 554122 (Ref. No. 14-1026-4940).

The El Paso Police Department (the "department") received a request for the log sheet and photographs relating to a specific case number. You claim the submitted information is exempted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's 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(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). You state the department received the request for information on November 18, 2014, and inform us the City of El Paso was closed for business on

¹Although you raised section 552.101 of the Government Code in conjunction with common-law privacy and constitutional privacy, you have not submitted arguments explaining how common-law or constitutional privacy applies to the submitted information. Therefore, we assume you have withdrawn these claims. *See* Gov't Code §§ 552.301, .302.

November 21, 27, and 28, 2014, and December 5, 2014. This office does not count the date the request was received as a business day for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, you were required to provide the information required by section 552.301(b) by December 8, 2014. However, the envelope in which the department submitted its request for a ruling was postmarked December 9, 2014. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Because the department did not submit the information required by section 552.301(b) within the required time period, we find the department failed to comply with the requirements of section 552.301.

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 the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Forth Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-81 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the 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 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 has waived its claim under section 552.108 of the Government Code and may not withhold any of the submitted information on this basis. However, we note portions of the submitted information are subject to section 552.130 of the Government Code.² As section 552.130 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this section to the submitted information.

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 personal identification document issued by an agency of this state or another state or country is

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).

excepted from public release. Gov't Code § 552.130. We note section 552.130 protects personal privacy. The motor vehicle record information we have indicated may belong to the requestor, and, as such, the requestor may have a right of access to this information. *See id.* § 552.023(b); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, we must rule conditionally. If the motor vehicle record information we have indicated belongs to the requestor, then the department must release it to the requestor. However, if the motor vehicle record information we have indicated does not belong to the requestor, then the department must withhold it under section 552.130 of the Government Code. As you raise no further exceptions against disclosure, the remaining information must be released.

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 554122

Enc. Submitted documents

c: Requestor
(w/o enclosures)