



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 22, 2015

Ms. Kelley Messer
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2015-10021

Dear Ms. Messer:

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# 565668.

The Abilene Police Department (the "department") received a request for information regarding a fatal motor vehicle accident involving a named individual. You state the department has released some information to the requestor. You claim 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 note, and you acknowledge, the department failed to comply with the requirements of section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b) (governmental body must request ruling from Office of Attorney General and state applicable exceptions to disclosure within ten business days after receiving request for information). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of the Act 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.—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);

Open Records Decision No. 319 (1982). The presumption information is public under section 552.302 can be overcome by demonstrating that 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).

You claim an exception to disclosure under section 552.108 of the Government Code, which is a discretionary exception that protects a governmental body's interests 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 generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). *But see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). Thus, your claim under section 552.108 is not a compelling reason to overcome the presumption of openness. Therefore, the department may not withhold any of the submitted information under section 552.108 of the Government Code.

Further, we note the requested information relates to a motor vehicle accident required to be reported under chapter 550 of the Transportation Code, and the requestor has provided the department with the requisite information for release pursuant to section 550.065(c)(4) of the Transportation Code. *See* Transp. Code §§ 550.062 (officer's accident report), .065(c)(4). When a person provides two of the required pieces of information to a governmental entity, it must release any information that relates to a motor vehicle accident required to be reported under chapter 550. *See City of San Antonio v. Abbott*, 432 S.W.3d 429 (Tex. App.—Austin 2014, pet. denied). Such a release is not limited to the accident report itself. *Id.* at 433. Information expressly made public by statute may not be withheld from the public under the general exceptions to public disclosure under the Act, such as section 552.108 of the Government Code. *See, e.g.,* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Thus, the department must release all of the requested information to the requestor pursuant to sections 552.302 of the Government Code and 550.065(c)(4) of the Transportation Code.

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,

A handwritten signature in black ink, appearing to read "Cindy Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 565668

Enc. Submitted documents

c: Requestor
(w/o enclosures)