



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2015

Ms. Susan Fillion
Assistant County Attorney
County of Harris
Harris County Sheriff's Office
1200 Baker Street, Second Floor
Houston, Texas 77002-1206

OR2015-14382

Dear Ms. Fillion:

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# 571612.

The Harris County Sheriff's Office (the "sheriff's office") received a request for a specified incident report. 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 must address the sheriff's office's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). The sheriff's office states it received the request for information on April 23, 2015. Accordingly, the sheriff's office's ten-business-day deadline was May 7, 2015. We note the envelope in which you originally submitted the request for a ruling was returned for insufficient postage, and the sheriff's office again mailed the required information to this office in an envelope meter-marked May 8, 2015. Section 552.308 of the Government Code provides, when a submission within a specified time period is required under the Act, the time requirement is met if the submission is sent by first class mail "with postage prepaid" and the postmark date is within the required time period. *See id.* § 552.308.

Because the sheriff's office did not submit the information required by section 552.301(b) within the required time period, we find the sheriff's office failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists 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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). The sheriff's office claims section 552.108 of the Government Code for the submitted information. However, this exception is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *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). Accordingly, the sheriff's office may not withhold any portion of the submitted information under section 552.108 of the Government Code. However, we note some of the submitted information is subject to section 552.130 of the Government Code.¹ Because section 552.130 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See Gov't Code* § 552.130(a)(1)-(2). Upon review, we find portions of the submitted information consist of motor vehicle record information. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his client's motor vehicle record information under section 552.023 of the Government Code and it may not be withheld under section 552.130. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987). Thus, the sheriff's office must withhold the motor vehicle record information we have marked and

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

indicated under section 552.130 of the Government Code. As you raise no further exceptions, the remaining information must be released.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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/cbz

Ref: ID# 571612

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released contains the requestor's client's driver's license information and social security number, to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code §§ 552.023(a), .130; ORD 481 at 4. We note section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Additionally, 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 office under the Act. *See id.* § 552.147(b). Thus, if the sheriff's office receives another request for this same information from a person who does not have such a right of access, sections 552.130(c) and 552.147(b) authorize the sheriff's office to redact the requestor's client's driver's license information and social security number, respectively.