



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2016

Ms. Heather Stebbins
County Attorney
County of Kerr
700 Main Street, Suite BA-103
Kerrville, Texas 78028

OR2016-10245

Dear Ms. Stebbins:

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# 608635.

The Kerr County Environmental Health Department (the "department") received a request for information pertaining to all complaints at a specified address related to solid waste and on-site sewage facilities during a specified time period. You state you will release some information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's procedural 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), 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). In this instance, you state the department received the request for information on February 2, 2016. You state the department was closed on February 15, 2016, in observance of President's Day. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the department's ten-business-day deadline was February 17, 2016. You state the envelope in which the department originally submitted the

information required by section 552.301(b) was returned to the department for insufficient postage, and the department again submitted the required information to this office. The envelope in which the department provided the information required by section 552.301(b) does not bear a postmark. *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). However, this office received the information at issue on February 26, 2016. 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 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 there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third-party interests. *See* ORD 630. You seek to withhold portions of the submitted information under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. The purpose of the common-law informer’s privilege is to protect the flow of information to a governmental body, rather than to protect a third person. Thus, the informer’s privilege, unlike other claims under section 552.101, may be waived. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the department’s assertion of the informer’s privilege does not provide a compelling reason for non-disclosure under section 552.302, and the department may not withhold the submitted information under section 552.101 of the Government Code on that basis. However, section 552.130 of the Government Code can provide a compelling reason to overcome the presumption of openness.¹ Therefore, we will address the applicability of section 552.130 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 excepted from public release. *See* Gov’t Code § 552.130(a). Upon review, we find portions of the submitted information consist of motor vehicle record information. We note

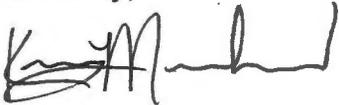
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.130 protects personal privacy. We further note some of the motor vehicle record information at issue may belong to the requestor, and, as such, the requestor may have a right of access to such information. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). However, because we are unable to determine whether the information at issue belongs to the requestor, we must rule conditionally. To the extent the discernible motor vehicle record information belongs to the requestor, the department must release it under section 552.023 of the Government Code. To the extent the discernible motor vehicle record information does not belong to the requestor, the department must withhold it under section 552.130 of the Government Code. As the department raises no further exceptions to disclosure, the department must release the remaining information.

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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 608635

Enc. Submitted documents

c: Requestor
(w/o enclosures)