



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2004

Mr. Juan E. Gonzalez
Law Office of Juan E. Gonzalez
3110 East Business Highway 83
Weslaco, Texas 78596

OR2004-5192

Dear Mr. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204002.

The City of Mercedes (the "city"), which you represent, received a request for a specific police report. You claim that 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 city's obligations under section 552.301 of the Government Code in seeking a ruling from this office. In accordance with section 552.301(b), a governmental body seeking a ruling from this office must assert the exceptions to disclosure that apply to the requested information no later than the tenth business day after receiving the written request. In addition, within fifteen business days of receiving the request, the governmental body is required to submit (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 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 Gov't Code § (e)(1)(A)*. The city received the request for the information at issue on March 24, 2004. The city did not request a ruling from this office or submit the items required by section 552.301(e)(1)(A) until April 21, 2004. Pursuant to section 552.302 of the Government Code, the city's failure to comply with section 552.301 results in the legal presumption that the information at issue is public and must be released.

In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ). This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law or affects third party interests. See Open Records Decision No. 150 (1977). You do not demonstrate a compelling reason to withhold the information under section 552.108. See Open Records Decision No. 586 (1991) (need of another governmental body to withhold information from disclosure provides compelling reason under section 552.108). We accordingly do not address your section 552.108 claim. However, the applicability of section 552.130 constitutes a compelling reason to withhold information, and therefore we will apply section 552.130 to the submitted information.¹

Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

The submitted information contains Texas driver's license information which pertains to the requestor. As section 552.130 is intended to protect a person's privacy, under section 552.023 of the Government Code, a person who is the subject of information within the scope of section 552.130 has a special right of access to such information. Gov't Code § 552.023 (person has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests). Here, the requestor has a special right of access to his driver's license information, and thus the city may not withhold this information from him under section 552.130. Accordingly, the city must release to the requestor Exhibit C in its entirety.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

¹The Office of the Attorney General will raise mandatory exceptions like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. David Floyd
Assistant Attorney General
Open Records Division

WDF/sdk

Ref: ID# 204002

Enc. Submitted documents

c: Mr. Antonio Chalons
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(w/o enclosures)