



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 1, 2004

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2004-8360

Dear Ms. Chang:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 210330.

The City of Houston (the "city") received a request for information relating to a car-jacking. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Initially, we address the city's obligations under section 552.301 of the Government Code. This section prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See Gov't Code* § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body does not request an attorney general

decision as prescribed by section 552.301, then the information requested in writing is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302.

In this instance, you have not submitted a copy of the request for information.<sup>1</sup> Thus, you have not complied with section 552.301 in requesting this decision. Therefore, the submitted information is presumed to be public under section 552.302 and must be released, unless there is a compelling reason to withhold any of the information. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome by a demonstration that the information is confidential by law or that third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver)*. The city's claim under section 552.108 is not a compelling reason for non-disclosure under section 552.302. *See Open Records Decision No. 586 at 2-3 (1991)*. In failing to comply with section 552.301, the city has waived section 552.108. *See Open Records Decision No. 663 at 5 (1999) (failure to comply with Gov't Code § 552.301 in requesting decision resulted in waiver of discretionary exceptions)*. Therefore, the city may not withhold any of the submitted information under section 552.108. However, your claim under section 552.130 can provide a compelling reason for non-disclosure under section 552.302. Therefore, we will address section 552.130.

Section 552.130 excepts from public disclosure information that relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). You have highlighted Texas driver's license numbers, Texas license plate numbers, Texas vehicle identification numbers, and a Texas personal identification number that appear in the submitted documents. We agree that all of this information must be withheld from the public under section 552.130. We have marked other information that also must be withheld from the public under this exception. We note, however, that section 552.130 protects personal privacy interests. In this instance, the

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<sup>1</sup>Our description of the request is based on other information that you provided in requesting this decision.

requestor appears to be the individual to whom one of the driver's license numbers and the personal identification number pertain. The requestor also appears to be the owner of the vehicle to which some of the motor vehicle information pertains. If so, then the requestor has a special right of access to her own Texas driver's license, personal identification and motor vehicle information, and such information may not be withheld from the requestor under section 552.130.<sup>2</sup> See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). If the requestor is not an individual to whom any of the information in question pertains, then the city must withhold all of the submitted Texas driver's license, motor vehicle and personal identification information under section 552.130.

In summary: (1) the city must withhold the Texas driver's license, motor vehicle and personal identification information under section 552.130, except to the extent that the requestor has a right of access to the information under section 552.023; and (2) the rest of the submitted information must be released.

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 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

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<sup>2</sup>We note that section 552.222 of the Government Code authorizes the city to require the requestor to provide additional identifying information sufficient to enable the city to determine whether the requestor is eligible to receive motor vehicle record information under chapter 730 of the Transportation Code. See Gov't Code § 552.222(c).

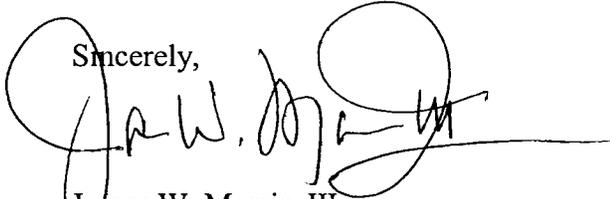
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a long horizontal line extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 210330

Enc: Submitted documents

c: Ms. Olivia Jordan  
614 ½ West 26<sup>th</sup> Street  
Houston, Texas 77008  
(w/o enclosures)