



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 31, 2005

Mr. Galen Gatten
Assistant City Attorney
City of Midland
P. O. Box 1152
Midland, Texas 79702-1152

OR2005-04725

Dear Mr. Gatten:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 227983.

The Midland Police Department (the "department") received a request for a specified offense report. 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 reviewed the submitted information.

We must address the department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body that receives a written request for information that it wishes to withhold from disclosure pursuant to an exception under the Public Information Act (the "Act") must ask for an attorney general decision no later than ten business days after the date of receiving the written request. *See Gov't Code* § 552.301(a), (b). You state that the department received this request for information on April 20, 2005. Therefore, you were required to submit your request for a decision from this office no later than May 4, 2005. Your request for a decision bears a post office cancellation mark indicating it was mailed on May 5, 2005. Consequently, we find that you failed to request a decision within the ten-business-day period mandated by section 552.301(b) of the Government Code. *See Gov't Code* § 552.308(a) (ten-day requirement met if request bears post office cancellation mark indicating time within ten-day period).

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 that the information is public

and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating 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 by the governmental body. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). However, the need of another governmental body to withhold information under section 552.108 can provide a compelling reason under section 552.302. *See* Open Records Decision No. 586 at 3 (1991). Although you raise section 552.108, your claim under this exception does not constitute a compelling reason to withhold the information in question. Accordingly, we determine that the information may not be withheld pursuant to section 552.108.

You claim that social security numbers are not subject to disclosure. Upon review, we note that the submitted documents do not contain social security numbers. We therefore do not reach your arguments against disclosure of such information.

You claim that a portion of the submitted information is excepted from disclosure pursuant to section 552.130 of the Government Code, which excepts from 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)(1)-(3). We note, however, that the requestor has a special right of access to his own section 552.130 information. *See* Gov't Code § 552.023. Accordingly, we determine that the department may not withhold any portion of the submitted information under section 552.130 of the Government Code. We conclude the department must release the submitted information to the requestor 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

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

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Enc: Submitted documents

c: Mr. Manuel Olivares
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(w/o enclosures)