



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2007

Mr. Matthew C. G. Boyle
Boyle & Lowry, L.L.P.
Assistant City Attorney
City of Grapevine
4201 Wingren, Suite 108
Irving, Texas 75062-2763

OR2007-06931

Dear Mr. Boyle:

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# 280105.

The City of Grapevine (the "city") received a request for information related to "an alleged incident of computer theft which was investigated by the Grapevine Police Department."¹ You claim that the requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act, chapter 552 of the Government Code. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would

¹As you have not provided this office with a legible copy of the request for information, we take our description from your brief.

²Although you cite to section 552.101 of the Government Code, you have provided no arguments in support of withholding the submitted information under this section. Therefore, we do not address the applicability of section 552.101 to the submitted information. See Gov't Code §§ 552.301(e)(1)(A), .302.

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. Gov't Code § 552.301(e). In this instance, although you have submitted the city's "Request for Information" form received by the city from the requestor, the relevant portions of the request are illegible and the form does not include the attachment submitted by the requestor which identifies the specific incident report requested. Consequently, because the city has failed to submit a legible copy of the requestor's entire written request for information, it has failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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 that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *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); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third-party interests. *See* Open Records Decision No. 630 (1994). Section 552.108 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and may be waived by the governmental body. *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 section 552.108 subject to waiver). Thus, this section generally does not demonstrate a compelling reason to withhold information from the public. In failing to comply with section 552.301 of the Government Code, the city has waived this exception. Therefore, the city may not withhold any of the submitted information under section 552.108 of the Government Code. We note, however, that portions of the submitted information are confidential by law. Accordingly, we will address this information.

You claim that the submitted documents contain information subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. We note that section 552.130 does not apply to out-of-state motor vehicle record information. Accordingly, the city must withhold the Texas driver's license numbers we have marked pursuant to section 552.130 of the Government Code. The remaining information must be released.

Although you request a previous determination regarding information excepted from disclosure under section 552.130, we decline to issue one at this time. Accordingly, 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 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); *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 Office of the Attorney General 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. 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 that reads "Jordan Johnson". The signature is written in a cursive style with a period at the end.

Jordan Johnson
Assistant Attorney General
Open Records Division

JJ/jb

Ref: ID# 280105

Enc. Submitted documents

c: Mr. Jon Thompson
3553 Kell Street
Fort Worth, Texas 76109
(w/o enclosures)