



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 17, 2008

Mr. Mark G. Mann  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR2008-12770

Dear Mr. Mann:

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# 321932.

The Garland Police Department (the "department") received a request for a specified police report. You state that some of the requested information has been released. You claim that the remaining 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 information you submitted.

We first note that the department did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that must be followed in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) provides that a governmental body must request a decision and claim its exceptions to disclosure no later than the tenth business day after the date of its receipt of the request for information. *See id.* § 552.301(b). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

You inform us that the department received the instant request for information on June 18, 2008, requested clarification of the request on June 23, and received a response

from the requestor on June 27. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). We note that a governmental body's deadline under section 552.301(b) is tolled while it is communicating with a requestor to clarify or narrow a request. *See* Open Records Decision No. 663 at 2-5 (1999). Therefore, the department's ten-business-day deadline in this instance was July 9, 2008. The department did not request this decision, however, until July 10. Thus, the department did not comply with section 552.301, and the submitted information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.108 of the Government Code, which the department claims, 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), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). The department'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 department has waived section 552.108 and may not withhold any of the submitted information under that exception. However, we will address the department's claim under section 552.130 of the Government Code, which can provide a compelling reason for non-disclosure.

Section 552.130 excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). We agree that the department must withhold the Texas driver's license and motor vehicle information that you have marked in green under section 552.130 of the Government Code. We have marked additional Texas motor vehicle information that must also be withheld under section 552.130.

We note that the department may be required to withhold some of the remaining information under section 552.1175 of the Government Code.<sup>1</sup> Section 552.1175 is applicable to information relating to a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. *See id.* § 552.1175(a)(1). Section 552.1175(b) provides as follows:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

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<sup>1</sup>Unlike other exceptions to disclosure under the Act, this office will raise section 552.1175 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

*Id.* § 552.1175(b). The department must withhold the information that we have marked under section 552.1175 to the extent that the information consists of the home telephone and personal cell phone numbers of peace officers who elect to restrict access to that information in accordance with section 552.1175(b).

In summary: (1) the department must withhold the Texas driver's license and motor vehicle information that you have marked, as well as the additional Texas motor vehicle information that we have marked, under section 552.130 of the Government Code; and (2) the department must withhold the information that we have marked under section 552.1175 of the Government Code to the extent that the information consists of the home telephone and personal cell phone numbers of peace officers who elect to restrict access to that information in accordance with section 552.1175(b). 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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,

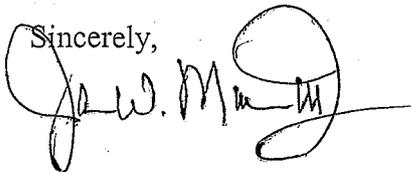
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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, appearing to read "James W. Morris, III". The signature is stylized with a large, circular flourish at the end.

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

JWM/jh

Ref: ID# 321932

Enc: Submitted documents

c: Mr. Ted Crowe  
Motel 6  
436 West Interstate 30  
Garland, Texas 75043  
(w/o enclosures)