



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 3, 2009

Mr. Robert E. Reyna
Assistant City Attorney
City of San Antonio
P. O. Box 839966
San Antonio, Texas 78283-3966

OR2009-04380

Dear Mr. Reyna:

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# 339345 (ORR # 2009-2481).

The San Antonio Police Department (the "department") received a request for all photographs and other information related to a particular motor vehicle accident. You claim 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 department's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). The department states it received the request for information on January 13, 2009, but did not request a ruling from this office until February 2, 2009. Thus, the department failed to comply with the procedural requirements mandated by section 552.301.

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 the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. See Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—

Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although you raise section 552.108 of the Government Code, this exception is discretionary in nature. It serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. See Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). However, some of the submitted information is subject to section 552.130 of the Government Code.¹ Because section 552.130 can provide a compelling reason for non-disclosure, we will consider the applicability of this exception to the submitted information.

Section 552.130 of the Government Code excepts from disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit or a Texas motor vehicle title or registration. Gov't Code § 552.130(a)(1), (2). We note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, Texas driver's license information that pertains to a deceased individual may not be withheld under section 552.130. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); see also Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). We further note the requestor, as the authorized representative of one of the individuals in the report, has a right of access to her client's Texas driver's license and Texas motor vehicle record information.² Gov't Code § 552.023 (person's authorized representative has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests). The department must withhold the Texas driver's license numbers of living individuals we have marked in the submitted information under section 552.130 of the Government Code. The remaining information must be released.³

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

²Because such information may be confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

³We note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. However, the requestor has a special right of access to her client's social security number. Gov't Code § 552.023.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Emily Sitton
Assistant Attorney General
Open Records Division

EBS/eeg

Ref: ID# 339345

Enc. Submitted documents

c: Requestor
(w/o enclosures)