



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2009

Mr. Craig Magnuson
Attorney, City of Mansfield
1305 East Broad Street
Mansfield, Texas 76063

OR2009-06386

Dear Mr. Magnuson:

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# 342786 (Open Record # 09-0241).

The Mansfield Police Department (the "department") received a request for all 9-1-1 tapes, service calls, and police reports for specified addresses involving specified individuals. You claim that 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 note the department has failed to comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving a written request for information. Gov't Code § 552.301(b). Section 552.308 states:

- (a) When this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period, the requirement is met in a timely fashion if the document is sent to the person by first class United States mail or common or contract carrier properly addressed with postage or handling charges prepaid and:

- (1) it bears a post office cancellation mark or a receipt mark of a common or contract carrier indicating a time within that period; or
- (2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail or common or contract carrier within that period.

Id. § 552.308(a). The department states it received the request for information on February 18, 2009. Accordingly, the department's ten business day deadline was March 4, 2009. In correspondence received by this office on March 9, 2009, the department requests a ruling regarding the present request for information. However, the envelope in which the department's request for a ruling was sent to this office does not bear a postmark date. Further, the department has not furnished satisfactory proof its request for a ruling was deposited in the mail within the ten business day deadline. Thus, we are unable to determine the department mailed its request for a ruling within the ten business day deadline required by section 552.301(b). Consequently, we find 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 requirements of section 552.301 results in the legal presumption 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 compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.108 of the Government Code, this section is a discretionary exception that protects a governmental body's interests and may be waived. Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold any of the submitted information under section 552.108 of the Government Code. However, we note that some of the submitted information may be excepted from disclosure under section 552.130 of the Government Code.¹ Because section 552.130 can provide a compelling reason to overcome the presumption of openness, we will address whether any of the submitted information must be withheld from public disclosure under this exception.

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

Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Therefore, the department must withhold the Texas motor vehicle information we have marked and the Texas license plate numbers contained in the submitted audio recording under section 552.130 of the Government Code.

In summary, the department must withhold the marked Texas motor vehicle information and the Texas license plate numbers contained in the submitted audio recording under section 552.130 of the Government Code. The remaining information must be released.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

Ref: ID# 342786

Enc. Submitted documents

c: Requestor
(w/o enclosures)