



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 6, 2009

Ms. Kristy Ashberry
City Secretary
City of Rockwall
385 South Goliad
Rockwall, Texas 75087

OR2009-09218

Dear Ms. Ashberry:

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# 348071.

The Rockwall Police Department (the "department") received a request for incident report number 2009-00008260. You claim the submitted incident report 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.

Initially, we must address the department's procedural obligations under the Act. 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), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code § 552.301(a), (b)*. In this instance, you indicate the department received the request for information on April 13, 2009. However, you did not request a ruling from this office until April 28, 2009. Consequently, we find the department failed to comply with the requirements of section 552.301 in requesting this decision from our office.

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

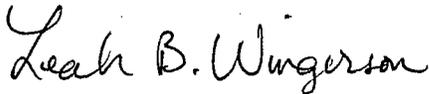
withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open 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 as an exception to disclosure of the submitted information, 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* Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Consequently, the department may not withhold the submitted incident report pursuant to section 552.108 of the Government Code. However, because section 552.130 can provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted incident report.

You assert parts of the submitted incident report are excepted under section 552.130 of the Government Code, which 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). We have marked Texas driver's license numbers and a Texas license plate number in the submitted report that are generally protected by section 552.130. We note, however, section 552.130 protects privacy interests. In this instance, the submitted information indicates the requestor may be a representative of the company that owns the vehicle to which the marked license plate number pertains. Thus, the requestor may have a right of access under section 552.023 to the marked license plate number. *Id.* § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds information is considered confidential under privacy principles). If the requestor is the authorized representative of the owner of the vehicle or has an ownership interest in the vehicle to which the marked license plate number pertains, then she has a right of access under section 552.023 to the marked license plate number and it may not be withheld under section 552.130. *Id.* § 552.023(a). If the requestor is not an authorized representative of the owner or does not have an ownership interest in the vehicle, then she does not have a right of access to the marked license plate number, and the department must withhold this information, along with the marked driver's license numbers, under section 552.130 of the Government Code. As you have claimed no other exceptions to disclosure, 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 348071

Enc. Submitted documents

c: Requestor
(w/o enclosures)