



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 30, 2009

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

OR2009-18441

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# 365887 (COSA File Nos. 2009-4424 and 2009-4445).

The San Antonio Police Department (the "department") received three requests for information pertaining to case number 90730156. You state you have released some information to the requestors. 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 must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that 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. *See* Gov't Code § 552.301(b). In this instance, the department received three requests from two different requestors for the information at issue. The department received the first two requests for information on October 1, 2009. Thus, the ten business day deadline for requesting a ruling from this office was October 15, 2009. Your request for a ruling was submitted to this office by U.S. mail postmarked on October 20, 2009. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find that the department failed to comply with the procedural requirements of section 552.301 with regards to the first two requests.

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 the governmental body demonstrates a compelling reason 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). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. *See* Open Records Decision No. 150 (1977). Section 552.108 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. 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). In failing to comply with section 552.301, the department has waived its claim under section 552.108 for this information. We note that in waiving section 552.108 for the first two requests, the department also waived section 552.108 with respect to the same information in the third request. Accordingly, the department may not withhold the information that is responsive to any of the requests under section 552.108 of the Government Code.

Next, we note that the submitted information includes a Texas Peace Officer's Crash Report that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential.¹ *See id.* § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the October 7, 2009 requestor has not provided the department with two of the three specified items of information. Therefore, the crash report that we have marked must be withheld from the October 7, 2009 requestor pursuant to section 550.065(b) of the Transportation Code. However, the October 1, 2009 requestor has provided the department with two of the three specified items of information. Therefore, the marked crash report must be released to the October 1, 2009 requestor in its entirety pursuant to section 550.065(c)(4) of the Transportation Code.

We note that some of the remaining information is 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). The department must

¹Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Unlike other exceptions, this office will raise section 552.101 on behalf of a governmental body, because the Act prescribes criminal penalties for the release of confidential information. *See id.* §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

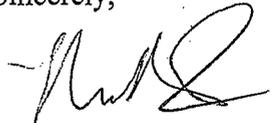
withhold the Texas motor vehicle record information we have marked under section 552.130.²

In summary, the marked crash reports must be withheld from the October 7, 2009 requestor pursuant to section 550.065(b) of the Transportation Code and released to the October 1, 2009 requestor pursuant to section 550.065(c)(4) of the Transportation Code. The department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestors.

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, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/jb

Ref: ID# 365887

Enc. Submitted documents

cc: 2 Requestors
(w/o enclosures)

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.