



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2010

Mr. B. Chase Griffith
Attorney for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2010-10964

Dear Mr. Griffith:

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#387899.

The City of McKinney (the "city"), which you represent, received a request for video footage recorded by a named officer at 20:53 p.m. on April 3, 2010. 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 city'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. *See Gov't Code § 552.301(b)*. Although you assert the city received this request on May 4, 2010, the request itself reflects it was delivered on Sunday, May 2, 2010. Therefore, for purposes of the Act, we find the city received the request on Monday, May 3, 2010. Consequently, we determine the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code in requesting this decision from us.

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; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 586 (1991). This office has held a compelling reason exists to withhold information when third party interests are at stake or when information is made confidential by another source of law. *See* Open Records Decision No. 150 (1977) (construing predecessor statute). Although the city claims an exception to disclosure under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 177 (1977) (governmental body may waive statutory predecessor to section 552.108), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, no portion of the submitted information may be withheld under section 552.108 of the Government Code. However, because section 552.130 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception.¹

Section 552.130 provides 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). Upon review, we find a portion of the submitted digital video disc contains Texas motor vehicle record information. Accordingly, the city must withhold the Texas license plate number we have noted within the submitted digital video disc under section 552.130 of the Government Code.² The remaining information must be released. We note that if the city does not have the technology available to redact the Texas license plate number we have noted, then the city must withhold the submitted digital video recording in its entirety under section 552.130 of the Government Code.

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,

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

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 license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in black ink, appearing to read 'V. Burgess', with a long horizontal flourish extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/jb

Ref: ID#387899

Enc. Submitted documents

c: Requestor
(w/o enclosures)