



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 6, 2010

Ms. Valecia R. Tizeno  
City Attorney  
City of Port Arthur  
P.O. Box 1089  
Port Arthur, Texas 77641

OR2010-15244

Dear Ms. Tizeno:

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# 395948.

The City of Port Arthur (the "city") received two requests from different requestors for information pertaining to a specified incident. You claim the requested 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 the Act. Section 552.301 of the Government Code 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 state the city received the first request for information on July 8, 2010. Thus, the city's ten-business-day deadline for the first request was July 22, 2010. However, your request for a ruling is meter-marked July 29, 2010. *See id.* § 552.308 (request is timely if sent by first class United States mail properly addressed with postage or handling charges prepaid and bears post office cancellation mark or receipt mark of carrier indicating time within that period). Thus, we find the city failed to comply with the requirements of 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 that the information is public and must be released, unless a compelling reason exists 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); *see also* Open Records Decision No. 630 (1994). 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. *See* Open Records Decision No. 150 at 2 (1977). Although you assert section 552.108 of the Government Code as an exception to disclosure, 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 Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Consequently, the city may not withhold any of the submitted information under section 552.108. However, we note portions of the submitted information are subject to section 552.130 of the Government Code.<sup>1</sup> Because section 552.130 can provide a compelling reason for non-disclosure, we will address the applicability of this section to the submitted information.

Section 552.130 of the Government Code exempts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(2). Upon review, we find the information we have marked consists of Texas motor vehicle record information that falls within the scope of section 552.130. However, we note section 552.130 protects personal privacy. Accordingly, the second requestor has a right of access to his own Texas motor vehicle record information under section 552.023 of the Government Code.<sup>2</sup> *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the city must withhold the marked Texas motor vehicle record information from the first requestor 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.

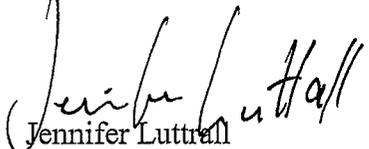
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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>Section 552.023 provides in part that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a).

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](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 395948

Enc. Submitted documents

c: Requestors  
(w/o enclosures)