



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2010

Mr. Jack K. Choate
First Assistant Criminal District Attorney
Walker County
P.O. Box 1659
Huntsville, Texas 77342

OR2010-15713

Dear Mr. Choate:

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# 396855.

The Walker County Planning and Development Department (the "department") received a request for seven categories of information pertaining to the requestor's client, enforcement of section 341.013 of the Health and Safety Code, and a specified ordinance. You state you have released some of the requested information. We note you have redacted Texas driver's license numbers under section 552.130 of the Government Code pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009). *See Gov't Code § 552.301(a)*; Open Records Decision No. 673 at 7-8 (2001). You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit written comments concerning disclosure of requested information).

Initially, we note a portion of the submitted information, which we have marked, was created after the request was received. This information is not responsive to the instant request for information. This ruling does not address the public availability of the non-responsive information, and the department need not release non-responsive information in response to this request.

Next, we must address the department's procedural 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 id.* § 552.301(a), (b). Further, pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this instance, you state the department received the request for information on June 30, 2010. However, you did not request a ruling from this office or submit arguments or the information at issue until August 9, 2010. You state the department informed the requestor that additional time would be needed to produce the requested information and received permission from the requestor for an extension of time for the department to fulfill the request for information. However, even though the requestor agreed to the extension, the deadlines prescribed by section 552.301 are fixed by statute and cannot be altered by agreement. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (obligations of a governmental body under predecessor to Act cannot be compromised simply by decision to enter into contract), 514 at 1-2 (1988). Additionally, you state, and provide documentation showing, that you provided the requestor with a cost estimate pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615 (providing that governmental body shall provide requestor with estimate of charges if charges exceed \$40). The requestor complied with section 552.2615 by accepting the charges. *See id.* § 552.2615(b). However, section 552.2615 of the Government Code provides that the submission of an estimate of charges to the requestor does not start over or toll the governmental body's deadlines to ask for an attorney general decision under section 552.301. *See id.* § 552.2615(g) (providing that "[t]he time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G"). Because the department did not seek a ruling or submit arguments or the information at issue until August 9, 2010, the department 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 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, 381-82 (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); *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. Open Records Decision No. 150 at 2 (1977). You assert the submitted information is excepted under sections 552.103 and 552.108 of the Government Code. These sections, however, are discretionary in nature. They serve only to protect a governmental body's interests, and may be waived; as such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Thus, no portion of the submitted responsive information may be withheld under section 552.103 or section 552.108 of the Government Code. However, we note some of the submitted information may be subject to section 552.130 of the Government Code. Because section 552.130 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exceptions to the responsive submitted information.¹

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, registration, or a personal identification document issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). We note section 552.130 protects personal privacy. In this instance, the requestor has a right of access under section 552.023 of the Government Code to his client's Texas motor vehicle information and it may not be withheld from him pursuant to section 552.130. *See generally id.* § 552.023(b). However, the department must withhold the Texas motor vehicle record information and Texas personal identification information not pertaining to the requestor's client, which we have marked, including the information we have indicated in the submitted photographs, under section 552.130 of the Government Code.²

Finally, we note some of the submitted information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1978). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of

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).

²This office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes the withholding of ten categories of information, including Texas driver's license numbers, Texas license plate numbers, and the portion of a photograph that reveals a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

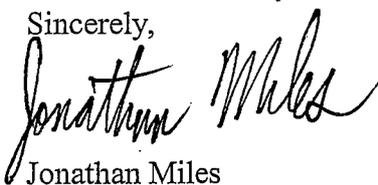
the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the department must withhold the information we have marked under section 552.130 of the Government Code. The remaining responsive information must be released in accordance with copyright law.³

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/dls

Ref: ID# 396855

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the remaining information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147. Further, the information being released in this instance includes information that may be confidential with respect to the general public. *Id.* 552.023 Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.