



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2010

Mr. Craig Magnuson
Attorney
Town of Pantego
P.O. Box 13210
Pantego, Texas 76094-0210

OR2010-19039

Dear Mr. Magnuson:

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# 403855.

The Town of Pantego (the "town") received a request for the police report pertaining to an incident that occurred on a specified date.¹ You indicate you have released some information to the requestor. 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 town's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, within fifteen business days of receiving the request, a governmental body is required to submit to this office (1) 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). As of the date of this letter, you have not submitted to this office a copy of the written request for information.

¹As you have failed to submit a copy of the request for information, we take our description from your brief.

Consequently, we find that the town has 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 submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason as to why the information should not be disclosed. *See 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). Normally, 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). You assert the submitted information is excepted from disclosure under section 552.108 of the Government Code. In failing to comply with the procedural requirements of section 552.301, you have waived your claim under section 552.108. *See* Open Records Decision Nos. 177 (1977) (statutory predecessor to section 552.108 subject to waiver); 522 (1989) (discretionary exceptions in general). Therefore, the submitted information may not be withheld under section 552.108. We note some of the submitted information is excepted from disclosure under section 552.130 of the Government Code.² Because section 552.130 can provide a compelling reason to withhold information, we will consider the applicability of this section to the submitted information.

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). Accordingly, the town must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.³ As no further exceptions to disclosure have been raised for the remaining information, it must be released.⁴

²The 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).

³We note that this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a copy of a Texas driver's license under section 552.130, without the necessity of requesting an attorney general decision.

⁴We note the information being released in this instance includes information that may be confidential with respect to the general public. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the town receives another request for this information from a different requestor, the town must again seek a ruling from this office.

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,

A handwritten signature in black ink, appearing to read 'Nneka Kanu', written over a horizontal line.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 403855

Enc. Submitted documents

cc: Requestor
(w/o enclosures)