



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 10, 2011

Ms. Cecilia Gamez  
Crime Records Bureau  
McAllen Police Department  
P.O. Box 220  
McAllen, Texas 78501

OR2011-02054

Dear Ms. Gamez:

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# 408772.

The McAllen Police Department (the "department") received a request for a specified confession and incident report numbers 2010-075965, 2010-104894, and 2010-118057.<sup>1</sup> You indicate the department has provided some of the requested information to the requestor. You claim two of the submitted incident reports are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we must address the department's obligations under the Act. 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 a copy of the written request for information. *See* Gov't Code § 552.301(e)(1)(B). In this instance, the department submitted only a partial copy of the written request for information. The submitted portion

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<sup>1</sup>As you have not submitted a copy of the request, we take our description from the submitted information.

of the request form states the requestor seeks information that is specified and explained on the back of the request form. The department, however, did not submit a copy of the back of the request form. Consequently, the submitted portion of the request form does not identify the requested information. Therefore, we find that, because the department did not submit the portion of the request that identifies the information the requestor seeks, the department has failed to comply with the requirements of section 552.301(e).

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 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, 381-82 (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). Although you assert the submitted incident report numbers 2010-104894 and 2010-118057 are excepted under section 552.108 of the Government Code, this section 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), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the department may not withhold any portion of incident report numbers 2010-104894 and 2010-118057 under section 552.108 of the Government Code. We note, however, portions of the submitted incident reports may be excepted under sections 552.130 and 552.136 of the Government Code.<sup>2</sup> Because sections 552.130 and 552.136 can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to the submitted information.

Incident report numbers 2010-104894 and 2010-118057 contain Texas license plate numbers and vehicle identification numbers. Section 552.130 of the Government Code provides information relating to a motor vehicle title or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(2). We have marked the license plate and vehicle identification numbers at issue. The department must withhold this information under section 552.130 of the Government Code.

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Incident report number 2010-075965 contains a bank account number. Section 552.136 of the Government Code provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

*Id.* § 552.136. We conclude the bank account number, which we have marked, constitutes an access device number for purposes of section 552.136. Thus, the department must withhold the marked bank account number under section 552.136 of the Government Code.

In summary, the department must withhold the Texas license plate and vehicle identification numbers we have marked in incident report numbers 2010-104894 and 2010-118057 under section 552.130 of the Government Code, and the bank account number we have marked in incident report number 2010-075965 under section 552.136 of the Government Code.<sup>3</sup> 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.

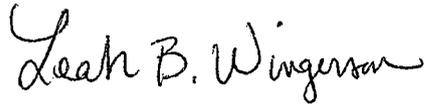
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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

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<sup>3</sup>We note 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 Texas license plate numbers under section 552.130 of the Government Code and bank account numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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 that reads "Leah B. Wingerson". The signature is written in a cursive style with a large initial "L".

Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 408772

Enc. Submitted documents

c: Requestor  
(w/o enclosures)