



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 17, 2011

Mr. Juan R. Molina
P.O. Box 190
Weslaco, Texas 78596

OR2011-02473

Dear Mr. Molina:

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# 409436.

The City of Mercedes (the "city"), which you represent, received a request for the police reports and any warrants issued related to a specified incident, as well as the name of the judge who issued the warrants. You claim 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 note you have not submitted the requested warrants. To the extent the requested warrants existed on the date the city received the request, we assume they have been released. If not, you must release such information at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we must address the city's procedural obligations under the Act. Section 552.301 of the Government Code 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) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Under section 552.301(e), a governmental body must 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, the submitted request reflects it was received by the city on November 15, 2010. We understand the city was closed for business on November 25 and 26, 2010. Thus, the city's ten-business-day deadline was December 1, 2010, and the city's fifteen-business-day deadline was December 8, 2010. However, both your brief requesting a decision from this office and the information responsive to the request were sent to this office in an envelope postmarked on December 10, 2010. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Thus, the city failed to comply with the requirements mandated by subsections 552.301(b) and (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 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 to withhold the information to overcome this presumption. *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); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, because section 552.108 is not a compelling reason to withhold information for purposes of section 552.302, the city waived its claim under that section by failing to comply with section 552.301. However, we note a portion of the submitted information is subject to section 552.130 of the Government Code, which can provide a compelling reason for purposes of section 552.302; therefore, we will consider whether this exception requires the city to withhold any portion of the submitted records.¹

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued

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

by a Texas agency. Gov't Code § 552.130(a)(1), (2). The city must withhold the Texas motor vehicle record information we have marked in the submitted information under section 552.130 of the Government Code.² The remaining submitted information must be released.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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 409436

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³The remaining information contains a social security number. 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(b).