



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 15, 2011

Ms. Jennifer C. Cohen  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-001

OR2011-03531

Dear Ms. Cohen:

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# 411268 (ORA # 10-2956).

The Texas Department of Public Safety (the "department") received a request for information related to a specified accident.<sup>1</sup> 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 department's obligations under the Act. Section 552.301 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(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. Gov't Code § 552.301(e). In this instance, you state the department received the request for information on December 20, 2010. As of the date of

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

this letter, however, you have not submitted a copy of the written request for information. Thus, we find 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 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 Gov't Code § 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. Open Records Decision No. 150 at 2 (1977). Although you assert the submitted information is 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 Gov't Code § 552.108 subject to waiver). Thus, the submitted information may not be withheld under section 552.108 of the Government Code. However, some of the information may fall within the scope of sections 552.101, 552.130, and 552.136 of the Government Code. As those exceptions are mandatory and may not be waived by a governmental body's failure to comply with section 552.301, we will address their applicability. *See* Gov't Code § 552.352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).<sup>2</sup>

We note a portion of the submitted documents includes CR-3 accident report forms completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, including section 550.065 of the Transportation Code. Section 550.065(b) states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of the accident report to a person who provides two or more of the following three pieces of information: (1) date of the accident; (2) specific location of the accident; and (3) name of any person involved in the accident. *Id.* § 550.065(c)(4).

Because you have not submitted the request for information, we cannot determine whether the requestor has provided the department with at least two of the three listed pieces of

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<sup>2</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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information and must rule conditionally. If the requestor has provided the department with at least two of the three listed pieces of information, the department must release unredacted copies of the "Texas Peace Officer's Accident Report" forms to him pursuant to section 550.065(c)(4). *See* Open Records Decision No. 623 at 3 (1994) (exceptions in Act inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). If, however, the requestor has not provided the required information, the department must withhold these reports pursuant to section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

Section 552.130 provides that 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). However, section 552.130 is designed to protect the privacy of individuals, and the right to privacy expires at death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Accordingly, to the extent the Texas motor vehicle record information we have marked pertains to a vehicle owned by a living person, it must be withheld under section 552.130 of the Government Code. However, if this information pertains solely to a deceased individual, it may not be withheld under section 552.130.

Lastly, we note the submitted records contain insurance policy numbers. 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.

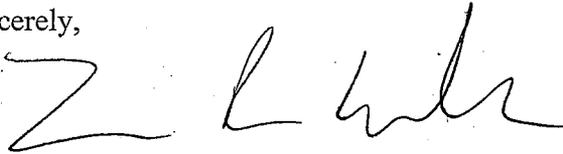
Gov't Code § 552.136. We conclude the insurance policy numbers we marked constitute access device numbers for purposes of section 552.136. Thus, the department must withhold the marked insurance policy numbers under section 552.136 of the Government Code.

In summary, unless the requestor has complied with the release provision of section 550.065(c)(4) of the Transportation Code, the department must withhold the "Texas Peace Officer's Accident Report" forms under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. To the extent the Texas motor vehicle record information we have marked pertains to a vehicle owned by a living person, it must be withheld under section 552.130 of the Government Code. The department must withhold the insurance policy numbers we have marked 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 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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/tf

Ref: ID# 411268

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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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 driver's license plate numbers under section 552.130 of the Government Code and insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.