



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 20, 2011

Chief James S. Kelley  
City of Sweetwater Police Department  
P.O. Box 450  
Sweetwater, Texas 79556

OR2011-13603

Dear Chief Kelley:

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# 430511.

The Sweetwater Police Department (the "department") received a request for information relating to an accident on a specified date involving a named individual. 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.

You state you do not have a CR3 Texas Police Officer Crash report responsive to the present request. The Act does not require a governmental body to release information that did not exist when a request for information was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). However, we note the requestor does not specifically seek a CR3 report, but rather information regarding the accident. A governmental body must make a good faith effort to relate a request to information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). Upon review, we find the submitted information is responsive to the present request. Thus, we will consider your claim under section 552.108 for the submitted information.

Section 552.301 of the Government Code prescribes the procedures that 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). Pursuant to section 552.301(e), a governmental body that receives a request for information it wishes to withhold under the Act 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 order for us to determine the statutory deadlines, a governmental body is required to submit to this office within fifteen business days of receiving an open records request a signed statement or other evidence showing the date the governmental body received the request. *See id.* § 552.301(e)(1)(C). In this instance, you do not inform us of the date the department received the request. Because you do not inform us when the request was received, we must assume that the department received the request on the day it was dated and faxed, which is May 23, 2011. Thus, the department's ten and fifteen business day deadlines were June 7, 2011 and June 14, 2011, respectively. The department's request for a ruling, the information at issue, and its comments were faxed to this office on July 18, 2011. Consequently, we find the department did not comply with section 552.301 in requesting this decision.

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 raise section 552.108 of the Government Code, this is a discretionary exception to disclosure that protects a governmental body's interests and may be waived; as such, this section does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold any of the submitted information under section 552.108. We note, however, the documents at issue contain information subject to section 552.130 of the Government Code.<sup>1</sup> Because this exception can provide a compelling reason to withhold information, we will address the applicability of this exception.

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<sup>1</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. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

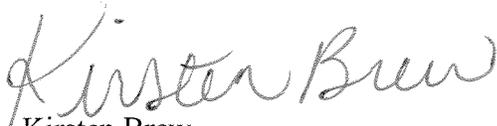
Section 552.130 excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country and information related to a motor vehicle title or registration issued by an agency of this state or another state or country. Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). We have marked the motor vehicle record information that the department must withhold under section 552.130.

In summary, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. 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,

A handwritten signature in cursive script that reads "Kirsten Brew".

Kirsten Brew  
Assistant Attorney General  
Open Records Division

KB/em

Ref: ID# 430511

Enc. Submitted documents

c: Requestor  
(w/o enclosures)