



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2011

Mr. Michael Bloch
Assistant District Attorney
Cameron County District Attorney
P.O. Box 2299
Brownsville, Texas 78522

OR2011-05538

Dear Mr. Bloch:

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# 415055.

The Cameron County District Attorney's Office (the "district attorney") received a request for the district attorney's complete file related to the complaint filed against the requestor's client by his former employer. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code and privileged under article 39.14 of the Code of Criminal Procedure.¹ We have considered your arguments and reviewed the submitted representative sample of information.²

First, you seek to withhold the submitted information pursuant to article 39.14 of the Code of Criminal Procedure. We note, however, article 39.14 governs the discovery of information and the testimony of witnesses in criminal proceedings. Article 39.14 does not expressly make information confidential for purposes of the Act. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality under section 552.101 must be express, and confidentiality requirement will not be implied from statutory structure), 478

¹Although you cite article 38.12 of the Code of Criminal Procedure for your prosecutorial work-product argument, you quote article 39.14 of the Code of Criminal Procedure. Based on your arguments, we understand you to argue article 39.14 instead of article 38.12.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public); *see also* Open Records Decision No. 575 at 2 (1990) (explicitly stating that discovery privileges are not covered by statutory predecessor to section 552.101). We therefore conclude the district attorney may not withhold any of the submitted information under article 39.14.

Next, we must address the district attorney'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). Further, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records 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. *Id.* § 552.301(e)(1)(A)-(D). The district attorney received this request for information on December 8, 2010. However, you did not request a ruling from this office with respect to this request until February 11, 2011. Accordingly, we conclude the district attorney 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 procedural requirements of the Act results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason 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); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Although you raise sections 552.103 and 552.108 of the Government Code, these exceptions are discretionary in nature. Sections 552.103 and 552.108 serve only to protect a governmental body's interests and may be waived; as such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); 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).

Accordingly, the district attorney may not withhold the submitted information pursuant to section 552.103 or section 552.108. However, because sections 552.130, 552.136, and 552.137 of the Government Code can provide compelling reasons to withhold information, we will address the applicability of these exceptions.³

Section 552.130 of the Government Code excepts from public disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit. Gov't Code § 552.130(a)(1). We note that section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his client's Texas motor vehicle record information under section 552.023 of the Government Code. *Id.* § 552.023 (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). Upon review, the district attorney must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides in part that "[n]otwithstanding any other provision of [the Act], 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(b); *see id.* § 552.136(a) (defining "access device"). Section 552.136 also protects privacy interests. Thus, the requestor has a right of access to his client's credit card and account numbers under section 552.023. The district attorney must withhold the bank account number and bank routing number we have marked that do not belong to the requestor's client under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). We note that section 552.137 also protects personal privacy. Accordingly, as noted above, the requestor has a right of access to his client's personal e-mail address. *See id.* § 552.023. However, the district attorney must withhold the e-mail addresses we have marked pursuant to section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure.

In summary, the district attorney must withhold (1) the Texas motor vehicle record information we have marked under section 552.130 of the Government Code; (2) the bank account number and bank routing number we have marked under section 552.136 of the Government Code; and (3) the e-mail addresses we have marked under section 552.137 of

³The 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).

the Government Code, unless the owners affirmatively consent to their disclosure.⁴ The remaining information must be released.⁵

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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 415055

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note Open Records Decision No. 684 (2009) is 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 of the Government Code, a bank account number and bank routing number under section 552.136 of the Government Code, and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

⁵We note the requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023. Because such information is confidential with respect to the general public, if the district attorney receives another request for this information from a different requestor, then the district attorney should again seek a ruling from this office.