



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2011

Mr. Thomas Bailey
Legal Services
VIA Metropolitan Transit
P.O. Box 12489
San Antonio, Texas 78212

OR2011-05851

Dear Mr. Bailey:

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# 415888.

VIA Metropolitan Transit ("VIA") received a request for information related to a specified incident involving the requestor's client. You state that some responsive information has been released to the requestor. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we address VIA's procedural obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Under 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) 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 requestor contends, and the submitted information reflects, that he made a previous request to VIA on November 30, 2010 that encompassed the information that is the subject of the present request. The requestor further contends that VIA did not provide the information at issue in the November request. The instant request

for a ruling was received by this office on February 22, 2011. We note we have not received correspondence from VIA responding to the requestor's contentions. Thus, we are unable to determine that VIA was timely in requesting a ruling from this office or in submitting the required information. *See id.* § 552.301(b), (e). Consequently, we find VIA failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that 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 (Tex. App.—Austin 1990, no writ); *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. *See* Open Records Decision No. 150 at 2 (1977).

You raise section 552.103 of the Government Code, which is discretionary in nature. Section 552.103 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 Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions). Because section 552.103 is a discretionary exception, VIA waived any assertions under this section by its failure to comply with section 552.301. Thus, VIA may not withhold the submitted information pursuant to section 552.103. However, we note some of the submitted information may be subject to section 552.130 of the Government Code.¹ Because section 552.130 can provide a compelling reason for non-disclosure, we will address the applicability of this exception to the submitted information.

Section 552.130 of the Government Code provides that 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). Accordingly, to the extent the submitted video recording contains a depiction of a discernible Texas license plate number, VIA must withhold such information under section 552.130 of the Government Code.² The remaining submitted information must be released to the requestor.

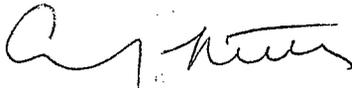
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note Open Records Decision No. 684 (2009), issued by this office as a previous determination to all governmental bodies, authorizes withholding of ten categories of information, including the portion of any video depicting a discernible Texas license plate number, under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/bs

Ref: ID# 415888

Enc. Submitted documents

c: Requestor
(w/o enclosures)