



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2011

Ms. Kristy Ashberry
City Secretary
City of Rockwall
385 South Goliad
Rockwall, Texas 75087

OR2011-07819

Dear Ms. Ashberry:

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# 420296.

The Rockwall Police Department (the "department") received a request for a specified incident report. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). The request reflects it was received by the department on March 22, 2011. Accordingly, the ten business-day deadline was April 5, 2011. However, the department's request for a ruling from this office was mailed by common or contract carrier on April 6, 2011. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the department failed to comply with the procedural 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 section 552.301 results in the legal presumption

that the information is public and must be released. Information 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 (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). Normally, 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 as an exception to disclosure of the submitted information, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 177 (1977) (governmental body may waive statutory predecessor to section 552.108), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, no portion of the submitted information may be withheld under section 552.108 of the Government Code. However, you also raise section 552.130 of the Government Code. Because section 552.130 can provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted information.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1). Accordingly, the department must withhold the Texas driver's license number we have marked under section 552.130 of the Government Code.¹ As no further exceptions to disclosure are raised, the remaining information must be released.²

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,

¹We 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 a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

²We note the information being released in this instance includes information to which this requestor has a right of access that is confidential with respect to the general public. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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 black ink, appearing to read "Sarah Casterline", with a stylized flourish at the end.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eb

Ref: ID# 420296

Enc. Submitted documents

c: Requestor
(w/o enclosures)