



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 7, 2011

Mr. Ryan S. Henry  
Denton, Navarro, Rocha & Bernal, P.C.  
2517 North Main Avenue  
San Antonio, Texas 78212

OR2011-08057

Dear Mr. Henry:

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# 419951.

The City of Carrollton (the "city"), which you represent, received a request for information pertaining to a specified individual and business.<sup>1</sup> You claim that the requested information is exempted from disclosure under sections 552.103, 552.107, 552.108, and 552.111 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

We address the requestor's claim the city failed to comply with the procedural requirements of the Act in requesting a ruling from this office. 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 exempted from public disclosure. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and

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<sup>1</sup>We note that the city asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</sup>Although you raise section 552.101 of the Government Code in conjunction with Rule 503 of the Texas Rules of Evidence, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). You claim this information is protected under the attorney-client privilege based on Texas Rule of Evidence 503. In this instance, however, the information is properly addressed here under section 552.107, rather than rule 503. ORD 676 at 3.

state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In addition, pursuant to section 552.301(e) of the Government Code, 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). In this instance, you state, and submit documentation showing, the city received the request for information on March 8, 2011. You inform us the city sought clarification of the request for information on March 17, 2011. *See id.* § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). You state, and provide documentation showing, the city received the requestor's clarification of the request for information by facsimile on March 28, 2011. We have no indication the city did not act in good faith in seeking clarification of the request. Accordingly, based on the submitted documentation, the city's ten- and fifteen-business-day periods under subsections 552.301(b) and 552.301(e) for requesting this decision commenced on March 28, 2011, the date of the city's receipt of the requestor's response to the request for clarification. *See City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). Consequently, the city's ten-business-day deadline was April 11, 2011, and its fifteen-business-day deadline was April 18, 2011. The city's request for a ruling is meter-marked March 30, 2011. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we find the city complied with the requirements of section 552.201(b). However, the city did not submit the requested information or comments stating the reasons why the stated exceptions apply until April 19, 2011. Therefore, we find the city failed to comply with the requirements of section 552.301(e) in requesting this decision from our office.

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). You assert the submitted information is excepted from

disclosure under sections 552.103, 552.107, 552.108, and 552.111 of the Government Code. However, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and generally are not compelling reasons to withhold information. *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. 676 at 12 (attorney-client privilege under section 552.107 constitutes compelling reason to withhold information under section 552.302 only if information's release would harm third party), 665 at 2 n.5 (2000) (untimely request for decision results in waiver of discretionary exceptions), 663 at 5 (1999) (governmental body may waive section 552.111), 470 (1987) (statutory predecessor to section 552.111 is discretionary exception), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). In failing to comply with section 552.301(e), the city has waived its claims under sections 552.103, 552.107, 552.108, and 552.111, and may not withhold the submitted information on the basis of these exceptions. However, we note portions of the submitted information are subject to section 552.130 of the Government Code.<sup>3</sup> Because section 552.130 can provide a compelling reason for non-disclosure, we will address the applicability of this section to the submitted information.

Section 552.130 of the Government Code 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.<sup>4</sup> Gov't Code § 552.130(a)(1), (2). Upon review, we find the city must withhold the Texas motor vehicle record information we have marked under section 552.130. As you claim no other exceptions to disclosure, the remaining information must be released.<sup>5</sup>

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.

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<sup>3</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).

<sup>4</sup>We 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 Texas driver's license number, Texas license plate number, and a copy of a Texas driver's license under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>5</sup>We note that the information being released contains confidential information to which the requestor has a right of access. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Thus, if the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.

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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 419951

Enc. Submitted documents

c: Requestor  
(w/o enclosures)