



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 10, 2011

Mr. John Ferguson
Assistant General Counsel
Texas Department of Public Safety
P. O. Box 4087
Austin, Texas 78773-0001

OR2011-08264

Dear Mr. Ferguson:

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# 420501 (ORA# 11-0734).

The Texas Department of Public Safety (the "department") received a request for information pertaining to parent taught driver education curricula, a specified course number, and a specified company. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code and the attorney-client privilege. We have considered your argument and reviewed the submitted information.

We note you have failed to fully comply with 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(a), (b). You state the department received the present request for information on March 25, 2011. Therefore, you were required to submit your request for a decision, stating the exceptions that apply, by April 8, 2011. Although you timely submitted your initial request for a decision to this office, you initially raised section 552.101 of the Government Code only as an exception to disclosure of the submitted information. Because you stated "section 552.101" only, you did not indicate you are asserting the attorney-client privilege until April 15, 2011 when you asserted Texas Rule of Evidence 503 in conjunction with section 552.101. This office has concluded section 552.101 does not encompass discovery privileges. *See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990)*. Thus, the proper exception to raise when asserting the attorney-client privilege in this

instance is section 552.107 of the Government Code. *See* Open Records Decision Nos. 677 (2002), 676 at 6. Consequently, we find the department has failed to comply with the ten business day deadline mandated by section 552.301(b) with respect to your claim under section 552.107.

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 that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 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). 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. *See* Open Records Decision No. 150 at 2 (1977). Although the department seeks to withhold the submitted information under section 552.107 of the Government Code, this is a discretionary exception to disclosure and does not demonstrate a compelling reason to withhold information from the public. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 663 at 5 (1999) (waiver of discretionary exceptions). Because the department failed to comply with the procedural requirements of the Act with respect to section 552.107, the department has waived its claim under this exception, and no information may be withheld on this basis. Section 552.101 of the Government Code can provide a compelling reason to withhold information; however, you do not cite to any specific law, and we are not aware of any, that makes any portion of the submitted information confidential under section 552.101. *See* Open Records Decision No. 478 at 2 (1987) (statutory confidentiality requires express language making information confidential or stating that information shall not be released to public). Therefore, the department may not withhold any portion of the submitted information under section 552.101. We note, however, some of the submitted information is be subject to section 552.137 of the Government Code.¹ Because section 552.137 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted information.

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* Gov't Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore,

¹The 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).

the department must withhold the personal e-mail address we have marked under section 552.137, unless the owner affirmatively consents to its public disclosure.² The remaining submitted 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, 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eb

Ref: ID# 420501

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²In Open Records Decision No. 684 (2009), this office issued a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including 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.