



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 15, 2011

Mr. Daniel W. Ray  
For Hunt County  
Scott, Money & Ray, P.L.L.C.  
P.O. Box 1353  
Greenville, Texas 75403-1353

OR2011-08515

Dear Mr. Ray:

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# 420709.

The Hunt County District Attorney (the "district attorney"), which you represent, received three requests for information related to a specified investigation. You claim the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the district attorney's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body 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). You state the district attorney received the first request for information on March 17, 2011. You inform our office the requestor agreed to a brief extension on the "normal ten-day response period." We note that the deadlines prescribed by section 552.301 are fixed by statute and cannot be altered by agreement. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (obligations of a governmental body under predecessor to Act cannot be compromised simply by decision to enter into contract), 514 at 102 (1988). Thus, we find the district attorney's ten-business-day deadline for the first request was March 31, 2011. The district attorney requested a ruling from this office on April 6, 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). Consequently, we find the district attorney failed to comply with the requirements of section 552.301 for the first request.

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 in response to the first request. We note in waiving sections 552.103 and 552.108 for the first request, the district attorney also waived these sections with respect to the second request and third request, which seek the same information. *See generally* Gov't Code § 552.007 (prohibiting selective disclosure of information). However, because section 552.130 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this exception.<sup>1</sup>

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. *Id.* § 552.130(a)(1). Upon review, the district attorney must withhold the Texas driver's license numbers we have

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<sup>1</sup>The 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).

marked under section 552.130 of the Government Code.<sup>2</sup> The remaining information must be released.<sup>3</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.

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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/dls

Ref: ID# 420709

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing the withholding of ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>3</sup>We note the remaining information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).