



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2011

Mr. Brandon S. Davis
Fielder & Gunter, Attorneys at Law
310 Main Street
Liberty, Texas 77575

OR2011-09655

Dear Mr. Davis:

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# 423014.

The Dayton Police Department (the "department"), which you represent, received a request for all information pertaining to a specified automobile accident. You state you have released the CR-3 accident report form to the requestor. *See* Transp. Code § 550.065(c)(4) (governmental body must release accident report to a person who provides two of the following three items of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident). You claim the remaining information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the remaining information.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. 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 from receiving the written request. Gov't Code § 552.301(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

order for us to determine the statutory deadlines, a governmental body is required to submit to this office within fifteen business days of receiving an open records request a signed statement or other evidence showing the date the governmental body received the request. *See id.* § 552.301(e)(1)(C). Although you state the request was received by the department “fewer than ten business days before the date of this request for determination,” you do not inform us of the date the department received the request. Because you do not inform us when the request was received, we must assume that the department received the request on the day it was dated, which is March 24, 2011. The department’s request for a ruling, the information at issue, and its comments were mailed to this office in an envelope postmarked April 29, 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 did not comply with section 552.301 in requesting this decision.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with 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, 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). 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). You assert the submitted information is excepted under section 552.108 of the Government Code. This section, however, is discretionary in nature. It serves only to protect a governmental body’s interests, and may be waived; as such, it generally does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the submitted information may not be withheld under section 552.108 of the Government Code. We note the submitted information includes information subject to section 552.130 of the Government Code.¹ Section 552.130 of the Government Code can provide a compelling reason to overcome the presumption of openness. Therefore, we will address whether the submitted information must be withheld from public disclosure under this exception.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas

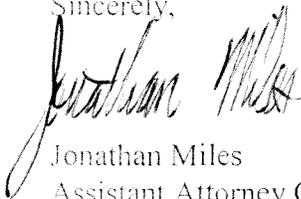
¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

agency or another state or country is excepted from public release. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). Accordingly, the department must withhold the information we have marked in the submitted report under section 552.130. The department must also withhold the portion of the photographs depicting a discernable Texas license plate number and registration sticker from DSC00614, DSC00633, DSC00581, DSC00582, DSC00587, DSC00588, DSC00591, DSC00530, DSC00531, DSC00533, and DSC00534 under section 552.130 of the Government Code. 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, 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 423014

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because the requestor, as the representative of the deceased's estate, has a special right of access to some of the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.