



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 11, 2011

Mr. B. Chase Griffith  
Counsel for City of McKinney  
Brown & Hefmeister, LLP  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2011-14706

Dear Mr. Griffith:

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# 433187 (McKinney ORR # 10-4160).

The McKinney Police Department (the "department"), which you represent, received a request for a specified case report. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We must first address the department's procedural obligations under the Act. 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 the 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. Gov't Code § 552.301(e). You inform us the department received the request on July 28, 2011. Thus, the department's fifteen-business-day deadline was August 18, 2011. However, you did provide this office with a copy of the request for information until August 22, 2011. Consequently, we find the department failed to comply with the requirements of section 552.301(e).

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

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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Although you raise section 552.108 of the Government Code, this exception is discretionary in nature and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 discretionary). Therefore, the department may not withhold the submitted information under section 552.108 of the Government Code. We note, however, some of the submitted information may be excepted from disclosure under section 552.130 of the Government Code.<sup>1</sup> Because section 552.130 can provide a compelling reason to overcome the presumption of openness, we will address its applicability to the submitted information.

Section 552.130 provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

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). We have marked the driver's license and motor vehicle record information that is subject to section 552.130. We note, however, a portion of the information we have marked belongs to the requestor's spouse, and the requestor in this instance may be acting as his spouse's authorized representative. Under section 552.023 of the Government Code, a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023(a). Therefore, because

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<sup>1</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. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.130 is based on privacy principles, if the requestor is acting as his spouse's authorized representative, then he has a right of access under section 552.023 to his spouse's driver's license and motor vehicle record information. In such case, the marked information pertaining to the requestor's spouse may not be withheld from him under section 552.130. However, if the requestor is not acting as the authorized representative of his spouse, then the department must withhold the information pertaining to his spouse under section 552.130 of the Government Code. In either case, the department must withhold the remaining information we have marked under section 552.130 of the Government Code. The remaining information must be released.<sup>2</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,



Kirsten Brew  
Assistant Attorney General  
Open Records Division

KB/em

Ref: ID# 433187

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note that the information being released contains the social security number of the requestor's spouse. 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. *See* Gov't Code § 552.147(b). However, if the requestor is the authorized representative of his spouse, then he has a right of access to this information and it may not be withheld from him. *See* Gov't Code § 552.023.