



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 14, 2011

Mr. Tuan Nguyen
Staff Attorney
City of Houston
1200 Travis
Houston, Texas 77002-6000

OR2011-18418

Dear Mr. Nguyen:

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# 438913 (ORR# 11-5232).

The Houston Police Department (the "department") received a request for Houston Police Department Incident Number 017245008-A.¹ 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 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(e), a governmental body must 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. *See Gov't Code § 552.301(e)(1)(D)*. You state the

¹As you have not submitted a copy of the request for information, we take our description from your brief.

department received the request for information on September 27, 2011. Accordingly, you were required to provide the information required by section 552.301(e) by October 18, 2011. However, as of the date of this letter, we have not received a copy of the written request for information. Accordingly, we conclude the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 319 (1982). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 177 (1977). The department claims section 552.108 of the Government Code for the submitted information. However, section 552.108 is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See* Gov't Code § 552.007; *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Accordingly, no portion of the submitted information may be withheld under section 552.108 of the Government Code. As you raise no further exceptions to disclosure, the submitted 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.

²We note the information being released includes information that is confidential with respect to the general public. The submitted driver's license number is generally confidential pursuant to section 552.130 of the Government Code, and the submitted social security number may generally be withheld under section 552.147 of the Government Code. However, because sections 552.130 and 552.147 protect personal privacy, the requestor has a right to his own driver's license and social security numbers under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). We note section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. *See* Gov't Code § 552.130(c). Additionally, we note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. Gov't Code § 552.147(b). Thus, if the department receives another request for this same information from a different requestor, subsections 552.130(c) and 552.147(b) of the Government Code authorize the department to withhold the driver's license number and social security number without the necessity of requesting an attorney general decision.

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,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/agn

Ref: ID# 438913

Enc. Submitted documents

c: Requestor
(w/o enclosures)