



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2012

Ms. Melissa A. Vidal
Assistant City Attorney
City of Laredo
P.O. Box 579
Laredo, Texas 78042-0579

OR2012-00517

Dear Ms. Vidal:

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# 441946 (Ref. No. W001745).

The City of Laredo (the "city") received a request for information pertaining to a specified motor vehicle accident involving a city police officer and the requestor's insured driver. You state the city has provided some of the requested information to the requestor. 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 have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we must address the city's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). In this instance, you state the city received the request for information on October 17, 2011. Accordingly, the city's ten-business-day deadline was October 31, 2011. The envelope in which the city submitted its request for a ruling request bears a postmark of November 2, 2011. *See id.* § 552.308 (providing ten-day requirement met if request bears post office cancellation mark indicating time within ten-day period). Thus, we find the city failed to comply with the requirements of section 552.301.

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 the requested information is public and must be released, unless a compelling reason exists to withhold the information from disclosure. *See 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 of the Government Code); *see also* Open Records Decision No. 630 (1994). Generally, 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. Open Records Decision No. 150 at 2 (1977). Although you assert the submitted information is excepted under section 552.108 of the Government Code, this exception is discretionary in nature. It serves only to protect a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Because the city failed to comply with the requirements of section 552.301, the city waived its claim under section 552.108. We note, however, some of the information is subject to section 552.130 of the Government Code.¹ Because section 552.130 can provide a compelling reason to overcome the presumption of openness, we will address the applicability of this exception to the submitted information.

The submitted investigation records contain motor vehicle record information. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. Gov't Code §§ 552.130(a)(1), (2). Therefore, the city must withhold the driver's license and license plate numbers we have marked in the submitted investigation records and the license plate numbers we have indicated in the submitted photographs under section 552.130 of the Government Code. As you have not claimed any other exceptions to disclosure, the city must release the remaining information.²

¹The 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).

²We note the information to be released includes the requestor's insured's motor vehicle record information, which is confidential under section 552.130 of the Government Code. Because this provision protects a person's privacy, the requestor has a right of access to his insured's private motor vehicle record information under section 552.023(a) of the Government Code. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). If the city receives another request for this information from an individual other than this requestor, the city should again seek our decision.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/dls

Ref: ID# 441946

Enc. Submitted documents

c: Requestor
(w/o enclosures)