



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2012

Mr. Lawrence G. Provins
Assistant City Attorney
City of Pearland
3519 Liberty Drive
Pearland, Texas 77581-5416

OR2012-01088

Dear Mr. Provins:

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# 447494.

The City of Pearland (the "city") received a request for a police report related to a specified incident. You claim that 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.

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* Gov't Code § 552.301(b). You state the city received the request for information on December 12, 2011. You inform us the city was closed on December 23, 2011, and on December 26, 2011. This office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the city's ten-business-day deadline was December 28, 2011. However, you did not submit your request for a decision until December 29, 2011. *See id.* § 552.308 (providing ten-day deadline met if request for ruling

bears post office mark indicating time within ten-day period). Consequently, we find the city failed to comply with the procedural requirements of section 552.301.

A governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information at issue 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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). You claim an exception to disclosure under section 552.108 of the Government Code, which is a discretionary exception that may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the city's claim under section 552.108 is not a compelling reason to overcome the presumption of openness. Therefore, the city may not withhold any of the submitted information 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 withhold information, we will consider the applicability of this exception to the submitted information.

Section 552.130 of the Government Code provides that information related to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a)(1). Accordingly, the city must withhold the driver's license numbers we have marked under section 552.130 of the Government Code. The city must release the remaining information.

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

¹The 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).

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 'Charles Galindo Jr.', written in a cursive style.

Charles Galindo Jr.
Assistant Attorney General
Open Records Division

CG/sdk

Ref: ID# 447494

Enc. Submitted documents

c: Requestor
(w/o enclosures)