



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 21, 2012

Mr. Louis T. Rosenberg  
For City of Floresville  
Law Office of Louis T. Rosenberg, P.C.  
322 Martinez Street  
San Antonio, Texas 78205-3407

OR2012-04159

Dear Mr. Rosenberg:

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# 448151 (Floresville ORR# 0609H(55)).

The City of Floresville (the "city"), which you represent, received a request for information pertaining to a specified address on a particular date, information pertaining to police activity involving the specified address, and any complaints or grievances filed against a named officer. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the requestor's contention the city failed to comply with the procedural 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 that it wishes to withhold. Pursuant to section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure 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. *See id.* § 552.301(e). The requestor has submitted to this office a copy of his request for information with a copy of the certified mail return receipt, signed and dated, showing a delivery date of December 22, 2011. You state the city's chief of police received the request for information on December 27, 2011. *See id.* § 552.301(c) (only request submitted by facsimile or electronic mail must be sent to designated public information officer). We understand the city observed December 23, 2011, December 26, 2011, January 2, 2012, and January 16, 2012 as holidays. This office does not count any holidays observed by a governmental body as business days for the purpose of calculating a governmental body's deadline under the Act. Accordingly, regardless of whether the city received the request for information on December 22, 2011 or December 27, 2011, you were required to submit a copy of the specific information requested or representative samples by January 19, 2012 at the latest. However, the envelope in which you submitted a copy of the specified information requested or representative samples to this office was postmarked on January 20, 2012. *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 city failed to comply with the requirements of section 552.301 in requesting this decision from our office.

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 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); Open Records Decision No. 630 (1994). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although you claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code, these are discretionary exceptions that protect a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W. 3d 469, 475-76 (Tex.App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 676 at 12 (2002) (claim of attorney-client privilege under section 552.107 does not provide compelling reason to withhold information under section 552.302). In failing to comply with section 552.301, the city has waived its claims under sections 552.103 and 552.107. Therefore, none of the submitted information may be withheld under these exceptions. We note, however, some of the submitted information is subject to section 552.130 of the Government Code.<sup>1</sup> 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 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 excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration, issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). Accordingly, the city must withhold the driver's license numbers and motor vehicle record information we have marked under section 552.130. 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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/ag

Ref: ID# 448151

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the requestor has a right of access to some of the information being released. Therefore, if the city receives another request for the same information from a different requestor, it must again seek a ruling from this office.