



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 4, 2012

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. box 469002
Garland, Texas 75046-9002

OR2012-04897

Dear Mr. Mann:

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# 450125 (GCA 12-0056).

The Garland Police Department (the "department") received a request for a specified report. You state the department has released some of the requested information. You claim that portions of the submitted information are 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 department's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). You state the department received the request for information on January 13, 2012. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. You state January 16, 2012 was a department holiday; therefore, the ten-business-day deadline for the request was January 30, 2012. The department requested a ruling from this office in an envelope postmarked January 31, 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, the department failed to request a decision from this office within the ten-business-day period prescribed by subsection 552.301(b).

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 information is public and must be released unless the governmental body overcomes this presumption by demonstrating a compelling reason to withhold the information. *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). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Although you raise section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to comply with section 552.301, the department has waived its argument under section 552.108, and may not withhold the information on that basis. However, portions of the information are subject to section 552.130 of the Government Code, which provides a compelling reason that overcomes the presumption of openness.¹

Section 552.130 of the Government Code provides information relating to a motor vehicle title or registration issued by an agency of Texas, another state, or country is excepted from public release. Gov't Code § 552.130(a)(2). We find the department must generally withhold the information we have marked under section 552.130. However, we note section 552.130 is based on privacy principles. In this instance, it is not clear whether the information we have marked belongs to the requestor. As such, this requestor may have a right of access to the marked information, and we must rule conditionally. *See id.* § 552.023 (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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, if the requestor has a right of access to the information we have marked, the department may not withhold this information from this requestor. Conversely, if the requestor does not have a right of access to this information,

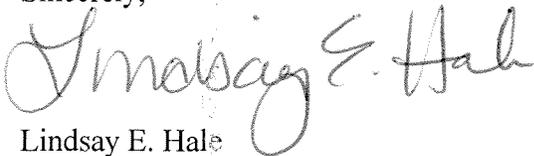
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the department must withhold this information under section 552.130 of the Government Code. As you raise no further exceptions to disclosure, the remaining information must be released.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 450125

Enc. Submitted documents

c: Requestor
(w/o enclosures)