



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 6, 2012

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

OR2012-04975

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# 450359 (Garland ID# GCA12-0063).

The Garland Police Department (the "department") received a request for a specific police report. 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 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 department received the request for information on January 19, 2012. Accordingly, the department's ten-business-day deadline was February 2, 2012. However, your request for a decision is postmarked February 3, 2012. *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 department 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 department's claim under section 552.108 is not a compelling reason to overcome the presumption of openness. Therefore, the department 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.<sup>1</sup> 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 information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We note that section 552.130 protects personal privacy. We have marked the motor vehicle record information that must be withheld under section 552.130 of the Government Code.<sup>2</sup> We note, however, the requestor in this instance may be the insurance provider for the individuals whose information is at issue. As such, this requestor may have a right of access to her insured's Texas motor vehicle information under section 552.023 of the Government Code. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). Accordingly, if the requestor is acting as her insured's authorized representative, then the Texas motor vehicle information may not be withheld from this requestor. If the requestor is not the insured's authorized representative, then the marked Texas motor vehicle information must be withheld under section 552.130 of the Government Code. The remaining information must be released.

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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).

<sup>2</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130, without the necessity of requesting an attorney general 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](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,



Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/dls

Ref: ID# 450359

Enc. Submitted documents

c: Requestor  
(w/o enclosures)