



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 7, 2012

Ms. Tiffany Bull  
Assistant City Attorney  
City of Arlington  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR2012-06688

Dear Ms. Bull:

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# 452843 (APD Ref. No 6803-021512).

The Arlington Police Department (the "department") received a request for information pertaining to a specified incident. 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.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it was created after the date the request was received. This ruling does not address the public availability of non-responsive information and the department is not required to release the non-responsive information in response to this request.

Next, 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 February 14, 2012. You state February 20, 2012 was a department holiday; therefore the department's ten-business-day deadline was February 29, 2012. However, your request for a decision is postmarked March 1, 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 responsive information under section 552.108 of the Government Code. We note, however, the responsive information contains information subject to sections 552.101, 552.130, and 552.136 of the Government Code, which can provide compelling reasons to withhold information.<sup>1</sup>

The responsive information contains a CR-3 accident report form. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c) or (e), accident reports are privileged and for the confidential use of certain specified entities. Transp. Code § 550.065(b). The submitted CR-3 crash report was completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has provided the department with the requisite information for the CR-3 crash report. We note the exceptions to disclosure found in the Act are generally not applicable to information another statute makes public. *See* Open

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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).

Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the department must release this report in its entirety to the requestor.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's 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. *See Gov't Code* § 552.130(a)(1)-(2). The department must generally withhold the motor vehicle information we have marked in the submitted documents under section 552.130 of the Government Code. The department must also generally withhold the portions of the submitted photographs depicting a discernable license plate number, vehicle identification number, or registration sticker under section 552.130 of the Government Code. We note, however, the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains to a deceased individual may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 at 1. We note that some of the motor vehicle information at issue relates to a vehicle that was owned by an individual who is now deceased. Accordingly, the motor vehicle information that pertains to the deceased individual may only be withheld under section 552.130 if a living person owns an interest in the vehicle at issue. If no living person owns an interest in the vehicle, then the motor vehicle information relating to that vehicle is not excepted from disclosure and must be released. Furthermore, the requestor in this instance appears to be the insurance provider for one of the individuals whose information is at issue. If this requestor is acting as that individual's authorized representative, then he has a right of access to his insured's marked motor vehicle record information and his information may not be withheld under section 552.130. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual).

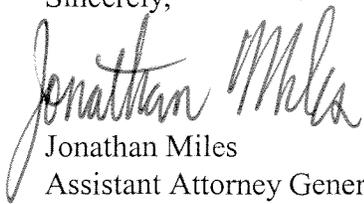
The remaining responsive documents also include information that is subject to section 552.136 of the Government Code. Section 552.136 provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining “access device”). We note the purpose of section 552.136 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, information that pertains solely to deceased individuals may not be withheld under section 552.136. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229; H-917; ORD 272 at 1. We have indicated bank account numbers belonging to a deceased individual. If a living person owns an interest in the bank account to which the indicated account numbers pertain, the department must withhold the marked account numbers under section 552.136 of the Government Code. *See Gov't Code* § 552.023(a); ORD 481 at 4. If no living person owns an interest in the bank accounts at issue, the department may not withhold the indicated bank account numbers under section 552.136.

In summary, the department must release the submitted CR-3 accident report under section 550.065(c) of the Transportation Code. The department must conditionally withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code, provided that a living person owns an interest in the deceased individual's vehicle. If no living person owns an interest in the vehicle at issue, the department may not withhold the marked motor vehicle record information pertaining to this vehicle under section 552.130 of the Government Code. Further, to the extent the requestor is acting as an individual's authorized representative, then he has a right of access to his insured's motor vehicle record information and his insured's information may not be withheld under section 552.130. Provided that a living person owns an interest in the bank account numbers we have indicated, the department must withhold the account numbers under section 552.136 of the Government Code; otherwise, these account numbers must be released. 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](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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 452843

Enc. Submitted documents

c: Requestor  
(w/o enclosures)