



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 8, 2012

Ms. Cynthia Villarreal-Reyna  
Director - Office of Agency Counsel  
Texas Department of Insurance  
Legal Section MC 110-1A  
General Counsel Division  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2012-06748

Dear Ms. Villarreal-Reyna:

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# 453158 (TDI Ref. No. 124144).

The Texas Department of Insurance (the "department") received a request for information pertaining to specified complaints filed by a named individual against three specified companies.<sup>1</sup> You state you have released some information to the requestor. You state that, although the department takes no position with respect to the remaining requested information, it may implicate the interests of the individual named in the request. Accordingly, you state you have notified the named individual of his right to submit comments to this office stating why his information should not be released.<sup>2</sup> *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released). We have reviewed the submitted information.

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<sup>1</sup>We note the department sought and received clarification the request for information. *See Gov't Code* § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</sup>As of the date of this letter, this office has not received comments from any third party explaining why any of the submitted information should not be released.

Initially, the department acknowledges, and we agree, it failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Because sections 552.130 and 552.137 of the Government Code can provide compelling reasons to overcome this presumption, we will consider whether these sections require the department to withhold the submitted information.<sup>3</sup>

We note the submitted information contains a partial driver's license number subject to section 552.130 of the Government Code, which provides information relating 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 department must withhold the information we have marked under section 552.130 of the Government Code.

The submitted information also contains e-mail addresses subject to Section 552.137 of the Government Code, which provides, "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. *Id.* § 552.137(c). The department must withhold the personal e-mail addresses in the submitted information, a representative sample of which we have marked, under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release.<sup>4</sup>

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<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

<sup>4</sup>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 an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion.

In summary, the department must withhold the partial driver's license number we have marked under section 552.130 of the Government Code. The department must also withhold the e-mail addresses of members of the public, a representative sample of which we have marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to release. The department must release the remaining information.<sup>5</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,



Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/eb

Ref: ID# 453158

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>5</sup>We note the information being released contains a partial social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).