



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 5, 2012

Mr. Tuan Nguyen  
Staff Attorney  
Houston Police Department  
1200 Travis  
Houston, Texas 77002-6000

OR2012-08590

Dear Mr. Nguyen:

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# 460674 (OR#12-2736).

The Houston Police Department (the "department") received a request for information related to a specified incident number. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We note the department did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) requires the governmental body to ask this office for a decision and claim its exceptions to disclosure no later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to

required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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).

You state the department received the present request for information on May 7, 2012; therefore, the department's ten-business-day deadline under section 552.301(b) was May 21. The department requested this decision by United States mail meter-marked May 22. *See* Gov't Code § 552.308 (prescribing requirements for proof of compliance with Gov't Code § 552.301). Thus, the department did not comply with section 552.301 of the Government Code in requesting this decision, and the submitted information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Although you claim an exception to disclosure under section 552.108 of the Government Code, that section is a discretionary exception 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 generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Thus, the department's claim under section 552.108 is not a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 (1991). In failing to comply with section 552.301, the department waived section 552.108 and may not withhold any of the submitted information on the basis of that exception. We note section 552.130 of the Government Code is applicable to some of the submitted information.<sup>1</sup> Because the applicability of that exception can provide a compelling reason for non-disclosure, we will address it.

Section 552.130 excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. *See* Gov't Code § 552.130(a)(1). The department must withhold the driver's license number we have marked under section 552.130 of the Government Code. The rest of the submitted 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.

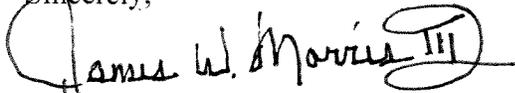
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php).

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<sup>1</sup>This office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a circled "III" at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/bs

Ref: ID# 460674

Enc: Submitted documents

c: Requestor  
(w/o enclosures)