



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2012

Mr. Christopher Gregg
Attorney for City of Webster
Gregg & Gregg, PC
16055 Space Center Boulevard
Houston, Texas 77062

OR2012-12589

Dear Mr. Gregg:

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# 461854.

The City of Webster (the "city"), which you represent, received a request for information pertaining to incident report number 12-00216. You state some information has been released. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we must address the city's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving the request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See* Gov't Code § 552.301(b). In this instance, you state the city received the request for information on May 10, 2012. Although you state the requestor verbally requested the report on May 25, 2012, the city's duty to request a decision from this office under the Act arises on receipt of a written request for information. *See* Gov't Code § 552.301(a). Accordingly, the ten-business-day deadline was May 24, 2012. The city's request for a decision, however, bears a post office mark reflecting it was mailed on June 4, 2012. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the

deadline period). Consequently, we find the city failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists 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 to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.108 of the Government Code, this is a discretionary exception to disclosure that protects only a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 586 (1991) (section 552.108 may be waived). As such, section 552.108 does not constitute a compelling reason to withhold information for purposes of section 552.302, and none of the submitted information may be withheld on that basis. However, we note a portion of the submitted information is subject to section 552.130 of the Government Code.¹ As this section makes information confidential for purposes of the Act, we will address its applicability.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). Therefore, the city must withhold the information we have marked under section 552.130. As you raise no additional exceptions to disclosure of the remaining information, it must be released to the requestor.

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

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

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 cursive script that reads "Misty Haberer Barham".

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 461854

Enc. Submitted documents

c: Requestor
(w/o enclosures)