



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 29, 2012

Ms. Teresa J. Brown
Senior Open Records Assistant
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2012-19204

Dear Ms. Brown:

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# 474230.

The City of Plano (the "city") received a request for all records pertaining to the requestor's address, his vehicle, the requestor and four named members of his family. You claim the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim.

Initially, we note a portion of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-00363 (2012). In that decision, we ruled, except for basic information, the city may withhold the submitted information under section 552.108 of the Government Code. Accordingly, as we are unaware of any change in the relevant law, facts, and circumstances on which the previous ruling was based, to the extent any of the requested information is identical to the information submitted in that ruling, we conclude the city may rely on Open Records Letter No. 2012-00363 as a previous determination and withhold such information in accordance with it. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent

any of the requested information is not encompassed by the prior ruling, we will consider your arguments against disclosure.

Next, we must address the city's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body that receives a request for information it wishes to withhold under the Act is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You state the city received the instant request for information on September 28, 2012. Thus, the city's fifteen-business-day deadline was October 19, 2012. However, as of the date of this letter, the city has not submitted to this office general written comments stating the reasons why the claimed exceptions apply to the requested information or a copy of the specific information requested or a representative sample. Accordingly, we find the city has failed to comply with section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information at issue is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public); *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) (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). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although you raise sections 552.103 and 552.108 of the Government Code for the requested information, these sections are discretionary in nature. They serve only to protect a governmental body's interests, and may be waived; as such, they do not constitute compelling reasons to withhold information. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the city has waived its claims under sections 552.103 and 552.108, and none of the requested information at issue may be withheld under these sections. You also raise section 552.101 of the Government

Code, which can provide a compelling reason to withhold information. However, because you have not submitted a copy or representative sample of the requested information for our review, we have no basis for finding that any of this information is excepted from required disclosure or confidential by law. Therefore, we must order the city to release the requested information at issue pursuant to section 552.302 of the Government Code.

In summary, to the extent any of the requested information is identical to the information submitted in Open Records Letter No. 2012-00363, the city may rely on that ruling as a previous determination and withhold such information in accordance with it. Otherwise, the city must release the requested information. If you believe this information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 474230

c: Requestor