



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

December 5, 2012

Ms. Cecilia Gamez  
Crime Records Office  
McAllen Police Department  
P.O. Box 220  
McAllen, Texas 78501

OR2012-19587

Dear Ms. Gamez:

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# 473173.

The McAllen Police Department (the "department") received a request for records related to a specified case. You contend the department may decline to comply with this request pursuant to section 552.028 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.028 of the Government Code provides in part:

(a) A governmental body is not required to accept or comply with a request for information from:

- (1) an individual who is imprisoned or confined in a correctional facility; or
- (2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under [the Act].

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

(c) In this section, "correctional facility" means:

(1) a secure correctional facility, as defined by Section 1.07, Penal Code;

(2) a secure correctional facility and a secure detention facility, as defined by Section 51.02, Family Code; and

(3) a place designated by the law of this state, another state, or the federal government for the confinement of a person arrested for, charged with, or convicted of a criminal offense.

Gov't Code § 552.028(a)-(c). You state the requestor is the sister of an incarcerated individual who is the subject of the submitted information. However, the requestor does not indicate she is acting as her brother's agent, and you provide no further details to explain the requestor is acting on the incarcerated individual's behalf. Thus, we conclude you have not established the requestor is, in fact, acting as the incarcerated individual's agent. We therefore conclude section 552.028 of the Government Code does not permit the department to decline to comply with this request. Accordingly, we will consider whether any of the submitted information is excepted from disclosure under the Act.

We must address the department's obligations under section 552.301 of the Government Code, which 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(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). The department received the request for information on September 17, 2012. You do not inform us the department was closed for any period of time. Accordingly, you were required to provide the information required by subsection 552.301(b) by October 1, 2012. However, the envelope in which the department provided the information required by subsection 552.301(b) was postmarked October 2, 2012. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the department failed to comply with the procedural requirements mandated by section 552.301 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 requested information is public and must be released unless there is a compelling

reason to withhold the information from disclosure. *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, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Because portions of the submitted information are subject to section 552.130 of the Government Code, and this section can provide a compelling reason to overcome this presumption, we will address the applicability of section 552.130 to the submitted information.<sup>1</sup>

Section 552.130(a) provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). The department must withhold the driver's license, motor vehicle record information, and personal identification document information we have marked under section 552.130 of the Government Code. 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

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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 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (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 "Jonathan Miles".

Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/bhf

Ref: ID# 473173

Enc. Submitted documents

c: Requestor  
(w/o enclosures)