



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2013

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2013-00335

Dear Mr. Alicie:

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# 475546.

The Baytown Police Department (the "department") received a request for information pertaining to a specified incident report number. You state the department will redact partial social security numbers pursuant to section 552.147 of the Government Code.¹ You claim some of the requested information is excepted from disclosure under section 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we understand you to assert a portion of the submitted information, which you have marked, is not responsive to the instant request because it is not a part of the specified report that is the subject of the instant request. Upon review, we agree the information you have marked is not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the department need not release this information to the requestor.

¹We note 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 under the Act. *See* Gov't Code § 552.147(b).

Next, we must address the department's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. 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* Gov't Code § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) 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. *See id.* § 552.301(e). In this instance, you state the department received the request for information on October 1, 2012. Accordingly, the department's ten-business-day deadline was October 15, 2012, and the department's fifteen-business-day deadline was October 22, 2012. However, you did not request a ruling from this office until October 23, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the department failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption 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). Because section 552.130 can provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted information.

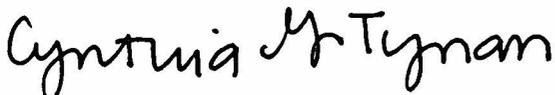
Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. *See* Gov't Code § 552.130(a)(1)-(2). Upon review, we agree the submitted information contains information subject to section 552.130 of the Government Code. We note, however, the requestor in this instance represents the insurance provider for one of the individuals listed in the submitted information. As such, the requestor, if acting as the individual's authorized representative, has a right of access to his insured's motor vehicle record information. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an

individual or authorized representative asks governmental body to provide information concerning that individual). In this instance, it is not clear that the requestor is acting as the individual's authorized representative. Therefore, we must rule conditionally. To the extent the requestor has a right of access under section 552.023 to her insured's motor vehicle record information, the department must release this information to the requestor. To the extent the requestor does not have a right of access under section 552.023, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. In either event, the department must withhold the motor vehicle record information you have marked, which does not pertain to the requestor's insured, 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, 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/akg

Ref: ID# 475546

Enc. Submitted documents

c: Requestor
(w/o enclosures)