



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 22, 2013

Mr. Neale Potts
Counsel for the City of Belton
Law Offices of Messer, Potts & Messer, P.C.
P.O. Box 969
Belton, Texas 76513

OR2013-01246

Dear Mr. Potts:

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# 476684.

The Belton Police Department (the "department"), which you represent, received a request for information pertaining to a specified case number. You state the department will release some information to the requestor, including the submitted Crash Report Form CR-3, upon payment. *See* Transp. Code § 550.065(c)(4) (officer's accident report must be released to person who provides two of following three pieces of information: date of accident; name of any person involved in accident; specific location of accident). You claim the remaining submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that 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* Gov't Code § 552.301(b). The department received the request for information on October 24, 2012. Thus, the department's ten-business-day deadline to ask for a decision from this office was November 7, 2012. We received your

request for a ruling stating the exceptions that apply on November 12, 2012. However, the envelope in which the department provided the information does not bear a postmark date. Further, the department has not furnished satisfactory proof that the information was deposited in the mail within the ten-business-day deadline. *See id.* § 552.308(a) (prescribing standards for timeliness of action by United States or common or contract carrier). Consequently, we find the department failed to comply with the procedural requirements mandated by section 552.301.

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. Information that is presumed public must be released unless the governmental body overcomes the presumption by demonstrating a compelling reason to withhold the information. *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 (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). Because the department has failed to comply with the requirements of the Act, the department has waived its claims under sections 552.103 and 552.108. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (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 in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions); 586 (1991) (governmental body may waive section 552.108), 473 (1987) (section 552.103 may be waived). Thus, no portion of the information at issue may be withheld under section 552.103 or section 552.108 of the Government Code.

We understand you have redacted a social security number pursuant to section 552.147(b) of the Government Code and information under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ 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). Section 552.147(b) 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. *Id.* § 552.147(b). We note that Open Records Decision No. 684 is not applicable to a vehicle identification number. We also note the purpose of sections 552.130 and 552.147 is to

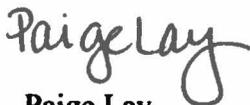
¹Open Records Decision No. 684 (2009) was issued by this office as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

protect the privacy interests of individuals. The requestor is an attorney representing the individual whose information is at issue. Thus, the requestor has a right of access to the license plate and vehicle identification numbers and social security number at issue under section 552.023(a) of the Government Code, and the department may not withhold this information from him. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, as no other exceptions to disclosure have been raised, the department must release the submitted information to the requestor.²

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/tch

Ref: ID# 476684

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²We note the information being released contains confidential information to which the requestor has a right of access. *See* Gov't Code § 552.023(a); ORD 481 at 4. If the department receives another request for this information from a different requestor, then the department should again seek a decision from this office.