



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 8, 2013

Mr. Brent A Money
Counsel for the City of Greenville
Scott, Money, Ray & Thomas PLLC
P.O. Box 1353
Greenville, Texas 75403-1353

OR2013-03999

Dear Mr. Money:

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# 481041.

The City of Greenville (the "city"), which you represent, received a request for information pertaining to case number 2012-00026539. You state the city has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the city'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* Gov't Code § 552.301(b). You state the city received the request for information on December 11, 2012. You state the city was closed for business on December 24, 2012, and December 25, 2012. Accordingly, you were required to provide the information required by subsection 552.301(b) by December 27, 2012. This office received the information required by subsection 552.301(b) on January 4, 2013. The envelope in which the city provided the information required by subsections 552.301(b) does not bear a postmark. Further, the city has not furnished satisfactory proof the required information was deposited in the mail within the ten-business-day deadline. *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 city 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. The city claims section 552.108 of the Government Code for the submitted information. However, this exception is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See* Gov't Code § 552.007; Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision Nos. 665 at 2 n. 5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, no portion of the submitted information may be withheld under section 552.108 of the Government Code. However, section 552.130 of the Government Code can provide a compelling reason to overcome the presumption of openness.¹ Therefore, we will address the applicability of 552.130 to the submitted information.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Upon review, we find portions of the submitted information consist of motor vehicle record information. We note section 552.130 protects personal privacy. In this instance, the requestor is acting as the authorized representative of an individual whose motor vehicle record information is contained in the submitted information. Moreover, some of the marked motor vehicle record information pertains to a vehicle that may belong to the requestor's client. Because the requestor is acting as the authorized representative of its client, the requestor has a right of access to any motor vehicle record information belonging to its client under section 552.023 of the Government Code. *See id.* § 552.023(a) (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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, if the license plate information and vehicle identification number

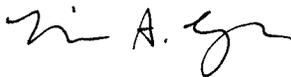
¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

we have marked pertain to a vehicle owned by the requestor's client, then the requestor has a right of access to the marked motor vehicle record information under section 552.023 of the Government Code and it may not be withheld under section 552.130. If the marked motor vehicle record information does not pertain to a vehicle owned by the requestor's client, then the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. As no other exceptions to disclosure are raised, the remaining information must be released.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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/eb

Ref: ID# 481041

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released contains the license number of the requestor's client. The requestor has a right of access to its client's driver's license number under section 552.023 of the Government Code. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987). Therefore, if the city receives another request for this particular information from a different requestor, then the city must again seek a ruling from this office.