



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 12, 2013

Mr. David V. Overcash
Counsel for City of Anna
Wolfe, Tidwell & McCoy, L.L.P.
2591 Dallas Parkway, Suite 205
Frisco, Texas 75034

OR2013-09868

Dear Mr. Overcash:

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# 490065 (City File No. C03029PIR20130321-01).

The City of Anna (the "city"), which you represent, received a request for information pertaining to a specified incident report. You have released some of the requested information to the requestor. You claim that portions of the submitted information are 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. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. *See* Gov't Code § 552.301(b). You state the city received the request for information on March 21, 2013. Thus, the city's ten-business-day deadline was April 4, 2013. The envelope in which the city sent its request for a ruling is post-marked April 5, 2013. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, the city failed to comply with the requirements of section 552.301(b) of the Government Code.

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 that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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); 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. *See* Open Records Decision No. 150 at 2 (1977). We note section 552.108 of the Government Code is discretionary in nature. This exception serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, no portion of the submitted information may be withheld under section 552.108. We note portions of the submitted information are subject to sections 552.101 and 552.130 of the Government Code.¹ Because sections 552.101 and 552.130 can provide compelling reasons to withhold information, we will address the applicability of these exceptions to the submitted information.

We note a portion of Exhibit 2, and a portion of the information you have marked for release in Exhibit 4, are subject to section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See* Gov't Code § 411.089(b)(1). The information at issue contains a Federal Bureau of Investigation ("FBI") number that constitutes CHRI generated by the FBI. Therefore, the city must withhold the information we have marked in Exhibits 2 and 4 under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

We also note a portion of Exhibit 2, and a portion of the information you have marked for release in Exhibit 4, are subject to section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's or driver's license or permit issued by any agency of this state or another state or country is excepted from public release. *Id.*

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).

§ 552.130(a)(1). Upon review, we find the city must withhold the driver's license information that you have marked, and the additional information we have marked in Exhibits 2 and 4, under section 552.130 of the Government Code.

In summary, the city must withhold the information we have marked in Exhibits 2 and 4 under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The city must withhold the information you have marked, and the additional information we have marked in Exhibits 2 and 4, under section 552.130 of the Government Code. 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

²We note that the information being released contains driver's license information that belongs to the requestor and his children, which would ordinarily not be releasable to the general public under section 552.130 of the Government Code. However, the requestor, as a parent to the children at issue, has a special right of access under section 552.023 of the Government Code to the children's driver's license information, as well as his own driver's license information. *See* Gov't Code § 552.023 (person or the parent of minor has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's or that person's child's privacy interest). We note section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. *See id.* § 552.130(c). Thus, if the city receives another request for this same information from a person who does not have such a right of access, the city may withhold this information pursuant to section 552.130(c) of the Government Code without the necessity of requesting a decision from this office.

Ref: ID# 490065

Enc. Submitted documents

c: Requestor
(w/o enclosures)