



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 12, 2014

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2014-04181

Dear Ms. McClellan:

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# 516386 (DPD No. 2013-14269).

The Dallas Police Department (the "department") received a request for specified offense reports and accident photographs. 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 representative sample of information.¹

Initially, you state the requested offense reports were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-22328 (2013). In Open Records Letter No. 2013-22328, we concluded, with the exception of basic information, which must be released, the department may withhold the offense reports under section 552.108(a)(1). We understand the law, facts, and circumstances on which the prior ruling was based have not changed. Accordingly, for the requested offense reports, we conclude the department may continue to rely on Open Records Letter No. 2013-22328 as

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

a previous determination and withhold or release the offense reports in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). However, as you inform us the submitted photographs were not at issue in the previous ruling, we will consider your argument against disclosure of this information.

Next, 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(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* Gov't Code § 552.301(e). The department received the request for information on December 17, 2013. We note the department was closed on December 25, 2013, and January 1, 2014. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, you were required to provide the information required by subsection 552.301(e) by January 9, 2014. However, you did not submit a copy of the written request for information until January 10, 2014. *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). Although you raise section 552.108 of the Government Code for the submitted information, this section is discretionary in nature. It 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. *See* Open Records Decision Nos. 665 at 2 n.5

(2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the department has waived its claim under section 552.108 for the submitted photographs. However, we note the submitted photographs contain information subject to section 552.130 of the Government Code.² Because section 552.130 can provide a compelling reason to withhold information, we will address the applicability of this exception to the information at issue.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the department must withhold the motor vehicle record information we have indicated in the submitted photographs under section 552.130 of the Government Code.³

However, we note the requestor may be the authorized representative of one of the individuals whose motor vehicle record information is at issue. Thus, he may have a right of access to this individual's motor vehicle record information. *See id.* § 552.023; ORD 481. Accordingly, if the requestor is acting as the authorized representative of any of the individuals whose information we indicated, then he has a right of access to the motor vehicle record information pertaining to that individual pursuant to section 552.023, and this information may not be withheld from him under section 552.130.

In summary, the department may continue to rely on Open Records Letter No. 2013-22328 as a previous determination and withhold or release the identical information in accordance with that ruling. The department must generally withhold the information we have indicated under section 552.130 of the Government Code. However, if the requestor is acting as the authorized representative of any of the individuals whose information is at issue, then the department must release that individual's motor vehicle information to this requestor. The department must release the remaining information.

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.

² 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 (1987), 480 (1987), 470 (1987).

³Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

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,

A handwritten signature in black ink that reads "Megan G. Holloway". The signature is written in a cursive style with a large, looping initial "M".

Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/akg

Ref: ID# 516386

Enc. Submitted documents

c: Requestor
(w/o enclosures)