



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2014

Mr. James Kopp
Assistant City Attorney
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2014-15470

Dear Mr. Kopp:

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# 534996 (COSA File No. W028704).

The San Antonio Police Department (the "department") received a request for information relating to a specified fatal accident. The department claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

Initially, we note the information we have marked is not responsive to the instant request for information because it consists of the instant request for information. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

Next, we must address the department's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving a written request the government a body must request a ruling from this office and state the exceptions to disclosure that apply. Gov't Code § 552.301(b). The department states it received the request for information on June 10, 2014. The department does not inform us it was closed for business on any of the days at issue. Accordingly, the ten-business-day deadline was June

on June 10, 2014. The department does not inform us it was closed for business on any of the days at issue. Accordingly, the ten-business-day deadline was June 24, 2014. However, the department submitted the information required under section 552.301(b) in an envelope bearing a meter mark of June 25, 2014. *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). Consequently, we find the department failed to comply with section 552.301 of the Government Code.

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 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). The department claims section 552.108 of the Government Code for the responsive 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 Simmons*, 166 S.W.3d at 350 (section 552.108 is not compelling reason to withhold information under section 552.302); 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). Accordingly, the department may not withhold any portion of the responsive information under section 552.108 of the Government Code. However, we note section 552.130 of the Government Code is applicable to some of the responsive information.¹ This section provides a compelling reason to overcome the presumption of openness. Therefore, we will address the applicability of this section to the responsive information.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or 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. Gov't Code § 552.130(a). Upon review, we find the department must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code. As the department raises no further exceptions to disclosure, it must release the remaining responsive information.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 534996

Enc. Submitted documents

c: Requestor
(w/o enclosures)