



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 17, 2015

Ms. Lisa D. Mares
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2015-12044

Dear Ms. Mares:

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# 568487 (McKinney ORR#15-15218).

The City of McKinney (the "city"), which you represent, received a request for the police report regarding a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 through 552.154 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general 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. You did not, however, submit to this office written comments stating the reasons why each exception you raised would allow the information to be withheld. Consequently, we find the city failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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); Open Records Decision No. 319 (1982). Normally, 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). You assert the requested information is excepted from disclosure under sections 552.101 through 552.154 of the Government Code. In failing to comply with the requirements of section 552.301, you have waived the discretionary exceptions you raised. *See* Open Records Decision Nos. 522 (1989) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the requested information may not be withheld under any of the claimed discretionary exceptions. Further, we find most of the mandatory exceptions you raised are inapplicable to the submitted information. We note, however, section 552.130 of the Government Code is applicable to some of the submitted information. Because this section can provide a compelling reason to withhold information, we will address whether the submitted information must be withheld under this section.

Section 552.130 excepts from disclosure information relating to a motor vehicle operator's license, driver's license, or motor vehicle title or registration issued by an agency of this state or another state or county. *See* Gov't Code § 552.130(a)(1)-(2). Accordingly, the city must withhold the motor vehicle record information we have marked under section 552.130.

In summary, the city must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/eb

Ref: ID# 568487

Enc. Submitted documents

c: Requestor
(w/o enclosures)