



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 14, 2016

Ms. Linda Pemberton  
Paralegal  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540

OR2016-27677

Dear Ms. Pemberton:

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# 637892 (Ref. ID# W020331).

The Killeen Police Department (the "department") received a request for a report and the 911 call audio related to a specified incident. You indicate the department has released some information to the requestor. 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 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. *See* Gov't Code § 552.301. 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 id.* § 552.301(a), (b). In this instance, you state the department received the instant request for information on September 19, 2016. You do not inform us the department was closed for any business days between September 19, 2016, and October 3, 2016. Accordingly, you were required to provide the information required by section 552.301(b) by October 3, 2016. However, the envelope in which the department provided the information required by section 552.301(b) was postmarked October 4, 2016. *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 the requirements of 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 requirements of section 552.301 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 id.* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public); *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 (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). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150(1977). Although you assert the requested information is excepted under section 552.108 of the Government Code, this section is discretionary in nature. It serves only to protect a governmental body's interests and may be waived; thus, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *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 makes information confidential and, thus, can provide a compelling reason to overcome the presumption of openness.<sup>1</sup> Therefore, we will address the applicability of this section 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. Accordingly, the department must withhold the motor vehicle record information we have indicated under section 552.130 of the Government Code. The department must release the remaining information.

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<sup>1</sup>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).

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](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,



Ian Lancaster  
Assistant Attorney General  
Open Records Division

IML/akg

Ref: ID# 637892

Enc. Submitted documents

c: Requestor  
(w/o enclosures)