



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 26, 2017

Ms. Julie Pandya Doshier
Counsel for the City of Highland Village
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

OR2017-01782

Dear Ms. Doshier:

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# 643057 (Ref. Nos. 81226-2016-237, 81281-2016-238, 81282-2016-236).

The City of Highland Village (the "city"), which you represent, received three requests from different requestors for a specified probable cause affidavit. The city states it will redact dates of birth pursuant to Open Records Letter No. 2016-21546 (2016). The city further states it will redact motor vehicle record information under section 552.130(c) of the Government Code.¹ The city claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address the city's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that

¹Section 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. *See* 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).

apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In this instance, the city states it received the first request for information on October 25, 2016. The city does not inform us it was closed for any business days between October 25, 2016, and November 8, 2016. Accordingly, the city's ten-business-day deadline was November 8, 2016, with respect to the first request. However, the envelope in which the city submitted the information required by section 552.301(b) bears a certified mail tracking number that demonstrates it was mailed on November 9, 2016. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the city 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 the procedural requirements of section 552.301 of the Government Code results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason 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 (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 Nos. 630 (1994), 586 (1991), 319 (1982). This office has held a compelling reason exists to withhold information when third-party interests are at stake or when information is made confidential by another source of law. *See* Open Records Decision No. 150 (1977) (construing predecessor statute). Although the city claims the submitted information is excepted from disclosure under section 552.108 of the Government Code, this exception to disclosure protects a governmental body's interest and may be waived; as such, section 552.108 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 (1977) (statutory predecessor to section 552.108 subject to waiver). Consequently, the city has waived its claim under section 552.108. We note the submitted information is responsive to both the first request and the subsequent requests. Thus, in waiving section 552.108 for the first request, the department also waived its claim for this same information responsive to the subsequent requests. *See* Gov't Code § 552.007 (prohibiting selective disclosure of information); Open Records Decision No. 463 at 1-2 (1987). Accordingly, none of the submitted information may be withheld under that exception to disclosure and therefore, the city must release the submitted information.²

²We note the first requestor has a right of access to some information being released pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (“[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 643057

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)