



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 9, 2019

Ms. Sandra L. Flores
Public Records Coordinator
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2019-28420

Dear Ms. Flores:

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# 790170 (ORR# 19-1026-10406).

The City of El Paso (the "city") received a request for information related to report number 19-096156. We understand the city will redact public citizens' dates of birth pursuant to Open Records Letter No. 2016-10113 (2016).¹ The city states it is releasing some of the requested information. The city claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the city claims and reviewed the submitted information.

Initially, we must address the city'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(b). Further, 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 id.* § 552.301(e). The city received the request for information

¹ Open Records Letter No. 2016-10113 authorizes the city to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

on April 23, 2019. The city does not inform us it was closed for any business days between April 23, 2019, and May 14, 2019. Accordingly, the city was required to provide the information required by section 552.301(b) by May 7, 2019. Moreover, the city was required to provide the information required by section 552.301(e) by May 14, 2019. However, the envelope in which the city provided the information required by sections 552.301(b) and 552.301(e) was postmarked July 31, 2019.² *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). Accordingly, we conclude the city failed to comply with the procedural requirements mandated by 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 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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). However, section 552.130 of the Government Code can provide a compelling reason to overcome the presumption of openness.³ Therefore, we will address the applicability of section 552.130 to the submitted information. However, we find the city has failed to establish a compelling reason to address its claimed exception.

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. Accordingly, the city must withhold the motor vehicle record information we marked and noted under section 552.130 of the Government Code. The city must also withhold all visible license plates within the submitted dashboard camera video recording under section 552.130 of the Government Code. The city must release the remaining information to this requestor.⁴

² The city claims, and provides United States Postal Service certified tracking results to demonstrate, the city sent the information required by sections 552.301(b) and (e) on May 3, 2019. However, a search of our records reveals the certified letter received by this office did not contain the materials at issue. Rather, the city's letter sent under that certified tracking number related to an unrelated request for information from the same requestor, as a result of which this office issued Open Records Letter No. 2019-14175 (2019).

³ 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).*

⁴ The information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See Gov't Code* § 552.147(b). We note the requestor has a right of access to some of the information being released. *See Gov't Code* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); *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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/gw

Ref: ID# 790170

Enc. Submitted documents

c: Requestor
(w/o enclosures)