



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 7, 2020

Mr. Mehran Jadidi
Assistant City Attorney
City of Galveston
P.O. Box 779
Galveston, Texas 77553-0779

OR2020-16976

Dear Ms. Jadidi:

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# 834758 (City PIR# W007342-040920).

The City of Galveston (the "city") received a request for information pertaining to a specified incident. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have redacted information from the submitted documents. We understand you have redacted motor vehicle record information pursuant to section 552.130(c) of the Government Code.² However, we note you have also redacted additional information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), (e)(1)(D). You do not assert, nor does our review of our records indicate, the city has been granted a previous determination to withhold such information

¹ Although the city does not raise section 552.130 of the Government Code in its brief, we understand the city to raise this exception based on its markings.

² Section 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).

without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2001). In this instance, we are able to discern the nature of the information that has been redacted; thus, being deprived of that information does not inhibit our ability to make a ruling. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information be released. *See Gov't Code* §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of “specific information requested”), .302. Thus, in the future, the city should refrain from redacting, without authorization, any information it submits to this office in seeking an open records ruling.

Next, we must address the city’s obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 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). The city received the request for information on April 9, 2020. You do not inform us the city was closed for any business days between April 9, 2020, and April 23, 2020. Accordingly, you were required to provide the information required by section 552.301(b) by April 23, 2020. However, the envelope in which the city provided the information required by section 552.301(b) was postmarked April 28, 2020. *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, 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). Although you claim section 552.101 of the Government Code in conjunction with the common-law informer’s privilege, we find you failed to establish a compelling reason to address this argument. However, as section 552.130 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the information at issue.

You state you are withholding motor vehicle record information pursuant to section 552.130(c) of the Government Code. We note the remaining information contains additional motor vehicle record 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.

We note section 552.130 protects privacy interests. Thus, the requestor has a right of access to his own motor vehicle record information. *See id.* § 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). In this instance, the requestor may have a right of access to the motor vehicle record information at issue pursuant to section 552.023 of the Government Code. However, because we are unable to determine whether the information at issue belongs to the requestor, we must rule conditionally. To the extent the motor vehicle record information you marked and we marked belongs to the requestor, he has a right of access under section 552.023 to this information, and the city may not withhold the marked information under section 552.130. To the extent the motor vehicle record information you marked and we marked does not belong to the requestor, the city must withhold the information you marked and we marked under section 552.130 of the Government Code. The city must release the remaining information.

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,

Meagan Hunter
Assistant Attorney General
Open Records Division

MH/eb

Ref: ID# 834758

Enc. Submitted documents

c: Requestor
(w/o enclosures)