OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

January 23, 2002

Ms. Kelly S. Ripley
Records Management Coordinator
City of Irving Police Department
305 North O'Connor Road
Irving, Texas 75061

OR2002-0334

Dear Ms. Ripley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158415.

The City of Irving Police Department (the "department") received a request for information relating to burglaries that occurred between November 5, 2001, and November 11, 2001. Specifically, the requestor seeks the name, telephone number, and address of the complainants in those burglary cases. You seek to withhold the requested information under section 38.18 of the Penal Code and section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

We begin by addressing whether the department may withhold the information from the requestor under the recently enacted section 38.18 of the Penal Code. Section 38.18 provides, in relevant part:

> (a) This section applies to:
>
> > (1) information described by Section 550.065(a), Transportation Code;
> >
> > (2) information reported under chapter 772, Health and Safety Code, other than information that is confidential under that chapter; and
> >
> > (3) information contained in a dispatch log, a towing record, or a record of a 9-1-1 service provider, other than information that is confidential under chapter 772, Health and Safety Code.

(b) A person commits an offense if:

(1) the person obtains information described by Subsection (a) from the Department of Public Safety of the State of Texas or other governmental entity; and

(2) the information is subsequently used for the direct solicitation of business or employment for pecuniary gain by:

(A) the person;

(B) an agent or employee of the person; or

(C) the person on whose behalf the information was requested.

You indicate that you have determined that the requestor is a licensed, active alarm salesperson, and you question whether the department could withhold the requested information from such a person if the department determined that the "requestor is soliciting business from the information obtained through his requests." First, we note that a governmental body is prohibited from inquiring into the motives of a requestor for seeking information. Gov't Code § 552.222(a). Thus, we are unclear as to how the department would determine that the requestor is seeking the information for the purpose of soliciting business. Second, section 38.18 clearly applies only to three categories of information: "(1) information described in section 550.065 of the Transportation Code; (2) information reported under Chapter 772, Health and Safety Code, other than information that is confidential under that chapter; and (3) information contained in a dispatch log, a towing record, or a record of a 9-1-1 service provider, other than information that is confidential under chapter 772, Health and Safety Code." You do not indicate, nor is it apparent, that the submitted information falls under any of these categories of information. Finally, and most importantly, section 38.18 of the Penal Code criminalizes the use of information obtained from the Department of Public Safety or another governmental entity for direct solicitation of business or employment; it does not require a governmental entity to withhold information from a requestor. Indeed, the statute specifically contemplates the release of the three types of information listed in subsection (a) to a requestor. Therefore, we find that the department may not withhold the requested information under section 38.18 of the Penal Code.

Next, we address your argument that the submitted information is excepted from public disclosure under section 552.108(a)(1) and (2) of the Government Code. Section 552.108 provides, in relevant part:

> (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:
>
> > (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
> >
> > (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication . . . .

Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that several of the cases at issue are still pending, while others "did not result in conviction or deferred adjudication." However, you do not indicate which of the cases are pending or have reached a final result other than conviction or deferred adjudication. Nor is it apparent from the face of the information whether the cases are pending or have reached a result other than conviction or deferred adjudication. Therefore, we find that you have not adequately demonstrated that any of the submitted information is excepted from disclosure under section 552.108(a)(1) or (2). Thus, we conclude that the requested information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

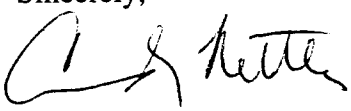
statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 158415

Enc. Submitted documents

c: Mr. Bill Fawcett
501 Brazos
Forney, Texas 75216
(w/o enclosures)