



September 24, 2002

Mr. Jason Martinson  
Open Records Coordinator  
Texas Parks and Wildlife  
4200 Smith School Road  
Austin, Texas 78744-3291

OR2002-5382

Dear Mr. Martinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 169164.

The Texas Parks and Wildlife Department (the "department") received a request for ten categories of information relating to Joe Pool Lake (the "lake"): a particular accident occurring on a specified day; accidents on the lake occurring during a specified range of dates; information concerning boating safety rules, ordinances, and regulations applicable during the year 2001; documents relating to a particular marina and/or restaurant; documents concerning two named individuals; and information relating to fatalities on the lake. You have submitted, as Attachments B, C, and D, a boating accident report form, a citation, and a compilation of violations sorted by the violators' last names. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, 552.108, 552.111, 552.117, 552.130, and 552.137 of the Government Code.<sup>1</sup> We assume that you have released all other responsive information to the requestor. If you have not released any such information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302. We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

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<sup>1</sup>As you did not submit to this office written comments stating any reason why sections 552.103, 552.107, and 552.111 apply to the submitted information, we find that you have waived these exceptions. *See* Gov't Code §§ 552.301, .302. We also note that you have submitted no arguments, nor are we able to discern, why the submitted information is excepted under sections 552.102, 552.117, and 552.137.

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. You assert that section 31.105 of the Parks and Wildlife Code makes confidential boating accident reports vessel operators file with the department, as well as any attachments to the reports. Section 31.105 states that

(a) The operator of a vessel involved in a collision, accident, or other casualty that results in death or injury to a person or damage to property in excess of \$500 shall file with the department on or before the expiration of 30 days after the incident a full description of the collision, accident, or casualty in accordance with regulations established by the department.

(b) The accident reports are confidential and are inadmissible in court as evidence.

Parks & Wild. Code § 31.105(a), (b). We conclude that the accident report which you have submitted as Attachment B was filed in accordance with the Parks and Wildlife Code section 31.105.<sup>3</sup> Consequently, the department must withhold the report from disclosure based on section 552.101.

At this time, you ask that we grant the department a previous determination regarding boating accident reports and attachments. Therefore, as per your request, this letter ruling shall serve as a previous determination under section 552.301(a) that boating accident reports as defined in section 31.105 of the Parks and Wildlife Code and attachments are excepted from disclosure under this section in conjunction with section 552.101 of the Government Code.

This previous determination applies only to boating accident reports and attachments requested of the department. *See* Open Records Decision No. 673 at 7 (2001). Moreover, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the department need not ask for a decision from this office again with respect to this type of information requested of the department. *See id.*

You next claim that the request for information relating to two named individuals implicates those individuals’ right of privacy. You also claim that “the release of several years worth of offense information for a particular area is the equivalent of compiling offense information for a named individual.” Pursuant to *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), where an individual’s criminal history information has been compiled or summarized by a governmental entity, the information takes on a character that implicates the individual’s right of privacy in a manner

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<sup>3</sup>Section 31.105, however, does not make confidential accident reports which do not involve personal injury or death or that only involve property damage less than \$500.

that the same individual records in an uncompiled state do not. Thus, when a requestor asks for unspecified information concerning a certain named individual and that individual is a possible suspect, arrestee, or defendant, a law enforcement agency must withhold this information under section 552.101 because that individual's privacy right has been implicated. *See id.* We believe that an individual's right to privacy has been implicated by the request. Thus, you must withhold the submitted information under section 552.101 of the Government Code and *Reporters Committee* to the extent that the individuals the requestor names in her request are listed as possible suspects, defendants, or arrestees. However, we find that a request for several years worth of offense information for a particular area is not a request for a compilation of an individual's private criminal history and so the department may not withhold the information on those grounds.

You next argue that documents relating to accidents or incidents on the lake, a representative sample of which you have submitted as Attachment D, are excepted from disclosure under section 552.108. Section 552.108(a) of the Government Code provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(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[.]

Gov't Code § 552.108(a)(1)-(2). You argue that some of the arrests and citations mentioned in Attachment D "relate to pending proceedings" and that release of this information "could potentially interfere with the ongoing prosecution." You also assert that other information submitted in these attachments relates to investigations that did not result in conviction or deferred adjudication. Accordingly, based on your representations and our review of the information, we conclude that you may withhold the information that relates to pending cases or cases that did not result in conviction or deferred adjudication under section 552.108(a)(1) and (a)(2).<sup>4</sup>

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of*

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<sup>4</sup>As we find Attachments C and D to be subject to sections 552.101 and 552.108, we need not address your arguments under section 552.130.

*Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), which includes a detailed description of the offense. Thus, with the exception of the basic offense and arrest information, you may withhold the remaining submitted information from disclosure based on section 552.108 (a)(1) and (a)(2). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the department must withhold from disclosure the boating accident reports in under section 552.101 in conjunction with section 31.105 of the Parks and Wildlife Code. The department must also withhold the submitted information under section 552.101 in conjunction with common-law privacy to the extent that it lists the two named individuals as possible suspects, defendants, or arrestees. With the exception of basic information, you may withhold the information as previously described under section 552.108. The remaining information must be released to the requestor.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. 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 of the General Services 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. 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,



V.G. Schimmel  
Assistant Attorney General  
Open Records Division

VGS/sdk

Ref: ID# 169164

Enc: Submitted documents

c: Ms. Rebekah D'Ambola  
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(w/o enclosures)