



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2005

Mr. David M. Swope
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2005-06399

Dear Mr. Swope:

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# 228337.

The Harris County Sheriff's Department (the "department") received a request for information regarding three named individuals for a specified period of time. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the requestor, in his request for information, allows the department to withhold an "officer's current and former home addresses, home telephone numbers, social security number, and information indicating whether the peace officer has family members, vehicle identification numbers, and driver's license or motor vehicle or title or registration that Texas has issued, medical information or information indicating disabilities or specific illnesses, from severe emotional and job-related stress, prescription drugs, illnesses, operations, and physical handicaps, tax forms, and personal financial information pertaining to voluntary financial decisions and financial transactions that do not involve public funds." Thus, this information is not responsive to the present request. We do not address your arguments for the non responsive information, which we have marked, and it need not be released.

We next note that the submitted information includes several completed reports, evaluations, and investigations made of, for, or by a governmental body. Section 552.022 of the Government Code provides that “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body” constitutes “public information . . . not excepted from required disclosure . . . unless . . . expressly confidential under other law” or excepted from disclosure under section 552.108 of the Government Code. Gov’t Code § 552.022(a)(1). Section 552.101 of the Government Code constitutes other law for purposes of section 552.022; therefore we will consider your sections 552.101 and 552.108 arguments.

Because your claim under section 552.108 is potentially the broadest, we will discuss it first. Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime.” A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have not stated that the submitted information pertains to a specified ongoing criminal investigation or prosecution, nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of crime. Thus, we conclude you have not met your burden under section 552.108(a)(1), and the department may not withhold any of the information at issue on that ground.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 1703.306 of the Occupations Code governs information obtained in the course of conducting a polygraph examination and provides that “a person for whom a polygraph examination is conducted . . . may not disclose information acquired from a polygraph examination” except to certain categories of people. Because the requestor does not fall within any of the enumerated categories, pursuant to section 552.101 and section 1703.306, you must withhold the submitted polygraph information we have marked.

Additionally section 552.101 encompasses information protected by section 550.065 of the Texas Transportation Code. Section 550.065(b) provides that, except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See id.* § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *See id.* In this instance, the requestor has not provided the department with at least two of the listed

three pieces of information. Accordingly, the department must withhold the submitted accident report forms pursuant to section 552.101 in conjunction with section 550.065(c)(4) of the Transportation Code.

In summary, the department must withhold the non responsive information; the accident report forms pursuant to section 552.101 of the Government Code in conjunction with section 550.065(c)(4) of the Transportation Code, and the marked polygraph information under section 552.101 in conjunction with section 1703.306 of the Occupations Code. The remaining submitted information must be released.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

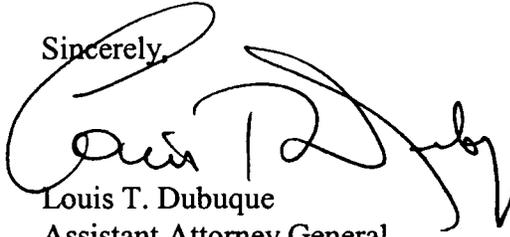
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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. 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,

A handwritten signature in black ink, appearing to read "Louis T. Dubuque", written over the word "Sincerely,".

Louis T. Dubuque
Assistant Attorney General
Open Records Division

LTD/seg

Ref: ID# 228337

Enc. Submitted documents

c: Mr. Neal Davis
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(w/o enclosures)