



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 1, 2005

Mr. Matthew C.G. Boyle  
Assistant City Attorney  
City of Farmers Branch  
Boyle & Lowry, L.L.P.  
4201 Wingren, Suite 108  
Irving, Texas 75062-2763

OR2005-11375

Dear Mr. Boyle:

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# 238765.

The City of Farmers Branch (the "city"), which you represent, received a request for copies of the police incident and arrest reports pertaining to a particular incident. You inform us that you are releasing some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address the city's obligations under the Act. Pursuant to section 552.301(e), the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general 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. You inform us that the city received this request on September 30, 2005. Thus, the fifteen-business-day deadline was October 21, 2005. Your submission of the arguments and the requested information was postmarked on October 24, 2005. *See* Gov't Code § 552.308. Consequently, we find that the city failed to comply with the procedural requirements of section 552.301.

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 a compelling reason

exists to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). The city has not provided a compelling reason under section 552.108 to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for non-disclosure under section 552.108). Therefore, you may not withhold any of the submitted information under section 552.108 of the Government Code. However, section 552.130 can provide a compelling reason to overcome the presumption of openness. Thus, we will address your arguments for this exception.

Section 552.130 of the Government Code excepts from public disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Accordingly, the city must withhold the Texas driver's license and motor vehicle information we have marked under section 552.130. We note, however, that this section excepts information from disclosure in order to protect an individual's privacy. Therefore, the requestor is entitled to his client's driver's license information, and it may not be withheld under section 552.130. *See* Gov't Code § 552.023 (person has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest).

We note that the submitted information contains a social security number. Section 552.147 of the Government Code<sup>1</sup> provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. The city must withhold the social security number we have marked under section 552.147.<sup>2</sup>

We also note that the submitted information contains criminal history record information. Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or

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<sup>1</sup>Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov't Code § 552.147).

<sup>2</sup>We note that 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 under the Act.

other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. The information submitted for our review contains CHRI generated by the TCIC and NCIC. Therefore, the city must withhold the CHRI we have marked under section 552.101 in conjunction with chapter 411 of the Government Code. We note that a person may obtain his own CHRI from DPS. Gov’t Code § 411.083(b)(3).

In summary, the city must withhold the information we have marked under sections 552.130 and 552.147 of the Government Code. The city must also withhold the CHRI we have marked under section 552.101 in conjunction with chapter 411 of the Government Code. The remaining information must be released to the requestor.

You ask this office to issue a previous determination permitting the city to withhold Texas driver’s license and license plate information without the necessity of requesting a decision from this office. We decline to issue such a previous determination at this time. Accordingly, 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); *Texas 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 Office of the Attorney General 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,



Jaime L. Flores  
Assistant Attorney General  
Open Records Division

JLF/krl

Ref: ID# 238765

Enc. Submitted documents

c: Mr. Roger Herrera  
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(w/o enclosures)