ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2005

Mr. Charles K. Eldred
Barney Knight & Associates
Assistant City Attorney for
The City of Sunrise Beach Village
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2005-11528

Dear Mr. Eldred:

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# 239445.

The City of Sunrise Beach Village (the "city"), which you represent, received a request for the used pages of all ticket books used by all city police offices for the current year. You claim that the submitted information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted information.[2] We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

Section 552.108 of the Government Code provides in 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]We note that although you raise section 552.101 for the social security numbers, section 552.147 of the Government Code was 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).

[2]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.

> (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
>
> (2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;
>
> . . .
>
> (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:
>
> (1) release of the internal record or notation would interfere with law enforcement or prosecution;
>
> (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

Gov't Code § 552.108(a)(1), (a)(2), (b)(1), (b)(2). Generally speaking, subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of subsections 552.108(a)(2) and 552.108(b)(2). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while section 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with on-going law enforcement and prosecution efforts in general. In contrast, sections 552.108(a)(2) and (b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. We note that a governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See* Gov't Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You state that some of the requested information consists of records that relate to pending criminal investigations. You also advise that some of the requested information consists of records pertaining to cases that are closed and concluded in a result other than conviction or deferred adjudication. However, you have not identified or explained whether the submitted tickets relate to pending criminal investigations or to closed cases that did not result in conviction or deferred adjudication. As such, we find that you have not demonstrated the applicability of section 552.108 to the information at issue. *See* Gov't Code § 552.301(e)(1) (requiring the governmental body to properly label and explain the applicability of the claimed exceptions). Accordingly, you may not withhold any of the requested information under section 552.108 of the Government Code.

You claim that portions of the requested information are confidential under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

> (a) Information is excepted from required public disclosure if the information relates to:
>
> > (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
> >
> > (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. We note that section 552.130 only applies to information that is issued by an agency of the State of Texas, and does not except from disclosure information that is issued by an out-of-state agency. Upon review, we have marked the Texas driver's license numbers and Texas license plate numbers that are excepted from disclosure. We note that this is the only section 552.130 information found in the submitted records. Accordingly, you must withhold the Texas-issued motor vehicle record information we have marked under section 552.130 of the Government Code.

You claim that the requested information contains social security numbers. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. None of the submitted information contains a social security number. Because you have not submitted this information for our review, we have no basis to find that section 552.147 is applicable to the requested information. *See* Gov't Code § 552.301(e) (requiring the governmental body to submit a a copy or representative sample of the requested information and label the submitted documents to indicate which exceptions apply to which parts of the documents). We note, however, 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.

In summary, the city must withhold Texas-issued motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining 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).

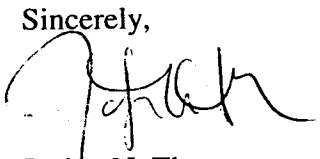
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 239445

Enc. Submitted documents

c: Robert Thompson
808 Sunrise Lane
Sunrise Beach, TX 78643
(w/o enclosures)