



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2006

Mr. Frankie Farrell
Custodian of Records
Kaufman County Sheriff's Department
P.O. Drawer 849
Kaufman, Texas 75142

OR2006-00613

Dear Mr. Farrell:

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# 240551.

The Kaufman County Sheriff's Department (the "department") received a request for information. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

Initially, we must address the department's obligations under section 552.301 of the Government Code. Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the

¹ To the extent any additional types of responsive information existed on the date the department received this request, we assume the department has released them. If the department has not released any such records, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

governmental body seeks to withhold or representative samples of the information if it is voluminous. *See* Gov't Code § 552.301(e)(1)(A)-(D). You have not provided this office with a copy of the written request for information. We therefore find that the department 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 the governmental body demonstrates a compelling reason 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, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third-party interests. *See* Open Records Decision No. 630 (1994). Section 552.108 is a discretionary exception to disclosure that protects the governmental body's interests and may be waived by the governmental body. *See* Gov't Code § 552.007; 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). Thus, this section does not demonstrate a compelling reason to withhold the submitted information from the public. We therefore determine the department may not withhold the submitted information pursuant to section 552.108 of the Government Code.

You also request that "any victim information of these 'Family Violence' related offenses[,] including witness statements and the victim's statement, along with any addresses, telephone numbers, and any other personal family information be withheld. However, you have not cited any law, nor are we aware of any law, that authorizes you to withhold this information in this instance. *See* Open Records Decision No. 611 (1992) (law enforcement records regarding family violence not generally excepted as a matter of law under section 552.101 of the Government Code). You also request that the submitted social security numbers be withheld. Section 552.147 of the Government Code² provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Section 552.147 can provide a compelling reason to overcome the presumption of openness under section 552.302. Therefore, the department must withhold the social security numbers

²Added 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).

we have marked in the submitted information under section 552.147.³ We note, however, that the submitted arrest warrant contains a social security number. Article 15.26 of the Code of Criminal Procedure states “[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information.” Crim. Proc. Code art. 15.26. Information that is specifically made public by statute may not be withheld from the public under any of the exceptions to public disclosure under chapter 552 of the Government Code. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Therefore, the social security number contained in the submitted arrest warrant is not excepted from disclosure under section 552.147 and it must be released to the requestor.

We note that some of the remaining information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.⁴ Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses the common law right to privacy. Common law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). We have reviewed the remaining records and marked the financial information that must be withheld pursuant to section 552.101 in conjunction with common law privacy.

Section 552.130 of the Government Code excepts from disclosure information that “relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. In accordance with section 552.130 of the Government Code, the department must withhold the Texas motor vehicle record information we have marked. We note, however, that the submitted complaint contains Texas motor vehicle record information. Pursuant to article 15.26 of the Code of Criminal Procedure, the Texas motor vehicle record information contained in the submitted complaint is not excepted from disclosure under section 552.130 and must be released to the requestor. *See* Crim. Proc. Code art. 15.04

³We 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.

⁴The Office of the Attorney General will raise mandatory exceptions like sections 552.101 and 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(Vernon Supp. 2005) (“[t]he affidavit made before the magistrate or district or county attorney is called a ‘complaint’ if it charges the commission of an offense”).

In summary, the department must withhold the information we have marked under sections 552.101, 552.130, and 552.147 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,


James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 240551

Enc. Submitted documents

c: Ms. Laurie Norris
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(w/o enclosures)