



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 9, 2006

Ms. Piper Smith
Open Records Liaison
Manufactured Housing Division
Texas Department of Housing and Community Affairs
P.O. Box 12489
Austin, Texas 78711-2489

OR2006-02407

Dear Ms. Smith:

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# 243802.

The Texas Department of Housing and Community Affairs (the "department") received a request for all documents pertaining to a specific case number and any other documents pertaining to the requestor's mobile home. You claim that the requested information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act. Pursuant to section 552.301(b), a governmental body that receives a written request for information that it wishes to withhold from disclosure pursuant to an exception under the Act must ask for an attorney general decision no later than ten business days after the date of receiving the written request. *See Gov't Code § 552.301(b)*. In addition, pursuant to section 552.301(e), a governmental body is required to submit to this office, within fifteen 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. Gov't Code § 552.301(e)(1)(A)-(D). You state that the department received the request for information on November 28, 2005. However, you did not request a decision from this office, or submit the information at issue, until December 30, 2005. Accordingly, the department has failed to comply with section 552.301 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. Gov't Code § 552.302. In order to overcome the presumption that the requested information is public information, a governmental body must provide a compelling reason why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); see Open Records Decision No. 630 (1994). Normally, a compelling reason exists when third-party interests are at stake, or when information is confidential under other law. See Open Records Decision No. 150 (1977). Although you assert that the submitted information is excepted from disclosure pursuant to section 552.107 of the Government Code, this is a discretionary exception and does not constitute a compelling reason to overcome the presumption that the information is public. See Open Records Decision No. 676 at 12 (2002) (harm to governmental body's interests under section 552.107 not compelling reason for non-disclosure), see also Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, none of the submitted information may be withheld from disclosure under section 552.107 of the Government Code.

We note, however, that the submitted documents contain information that is subject to section 552.136 of the Government Code.¹ Section 552.136 provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

¹ The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Gov't Code § 552.136. The department must withhold the bank account information that we have marked pursuant to section 552.136 of the Government Code. The remaining submitted information must be released.²

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).

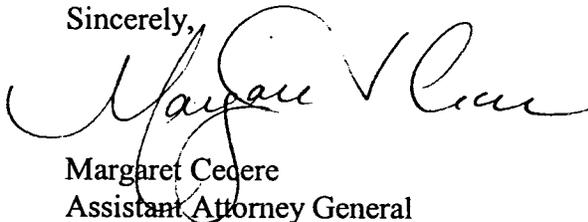
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 342 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

² We note that some of this information is confidential and not subject to release to the general public. However, the requestor in this instance has a special right of access to the information. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). Because such information may be confidential with respect to the general public, if the department receives another request for this particular information from a different requestor, the department should again seek a decision from this office.

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,

A handwritten signature in cursive script, appearing to read "Margaret Cecere".

Margaret Cecere
Assistant Attorney General
Open Records Division

MC/segh

Ref: ID# 243802

Enc. Submitted documents

c: Mr. Lewis Cross
451 Anderson County Road 2128
Palestine, Texas 75801
(w/o enclosures)