



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2006

Chief G. M. Cox
Chief of Police
Corsicana Police
200 North 12th Street
Corsicana, Texas 75110

OR2006-09563

Dear Chief Cox:

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# 257200.

The Corsicana Police Department (the "department") received a request for "a list of alarm locations and their permit/registration numbers and expirations dates" registered to the requestor's security company. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.110 of the Government Code. We considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we must address the department's procedural obligations under the Act. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records 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

¹We assume that the 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.

exceptions apply to which parts of the documents. You did not submit to this office written comments stating the reasons why the exceptions that you raised would allow the information to be withheld. Consequently, you have failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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 Gov't Code § 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).

Although you raise section 552.108 of the Government Code, this section is a discretionary exception that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally); 522 at 4 (1989) (discretionary exceptions in general). *But see* Open Records Decision No. 586 (1991) (need of another governmental body to withhold information may provide compelling reason for nondisclosure under section 552.108). Accordingly, you may not withhold the requested information under section 552.108. Furthermore, we note that you have not identified any third parties whose proprietary interests may be implicated by the request and we have not received comments from any third parties. *See* Open Records Decision Nos. 552 at 5 (1990) (if governmental body takes no position under section 552.110(a) of the Government Code, third party must establish *prima facie* case that information is trade secret), 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information under section 552.110(b) of the Government Code, third party must show by specific factual evidence, not conclusory or generalized allegations, that release of information would cause that party substantial competitive harm). Accordingly, none of the requested information may be withheld on this basis.

Next, section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by statute.² Section 1702.284 of the Occupations Code provides as follows:

²The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Information contained in alarm systems records maintained by a governmental body that concerns the location of an alarm system, the name of the occupant of an alarm system location, or the type of alarm system used is confidential and may be disclosed only to the [Texas Commission on Private Security] or as otherwise required by state law or court order.

Occ. Code § 1702.284. You have submitted alarm system permit applications. We have marked the information which must be withheld under section 552.101 in conjunction with section 1702.284. However, the requested permit numbers and permit expiration dates are not confidential under section 1702.284. Accordingly, this information may not be withheld under section 552.101 on this basis, and must be released to the requestor. As the remaining submitted information does not pertain to the location of an alarm system, permit/registration numbers and expiration dates, it is not responsive to the instant request, and the department need not release this information to the requestor.

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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/krl

Ref: ID# 257200

Enc. Submitted documents

c: Ms. Beth Johnson
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(w/o enclosures)