



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 30, 2007

Mr. Charles K. Eldred
Assistant City Attorney
Knight & Partners
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2007-06781

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# 279900.

The Kyle Police Department (the "department"), which you represent, received a request for (1) police regulations and policies with regard to responding to and investigating incidents of family violence, and (2) records, communications, and reports relating to a specified incident. You state that the department is releasing some of the responsive information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the procedural requirements of section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See Gov't Code* § 552.301(b). 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 exceptions apply to which parts of the documents. *See Gov't Code* § 552.301(e).

You state that the department received the initial request for information on March 5, 2007. You inform us that the department asked the requestor to clarify the request on March 9, 2007. *See* Gov't Code § 552.222. In Open Records Decision No. 663 (1999), this office determined that during the interval in which a governmental body and a requestor communicate in good faith to narrow or clarify a request, the Act permits a tolling of the statutory ten business day deadline imposed by section 552.301. However, a governmental body's request for clarification or narrowing does not give that governmental body an additional ten full days from the date the requestor responds to the clarification request. Rather, "the ten-day deadline is tolled during the process but resumes, upon receipt of the clarification or narrowing response, on the day that the clarification is received." ORD 663 at 5. Thus, the ten business day time period to request a decision from us under section 552.301(b) was tolled on the date that the department sought clarification of the request. *See* Gov't Code § 552.301(b). You state that the department received the clarification on the same day, March 9, 2007, that the department sought clarification. Accordingly, we conclude that the ten business day time period for requesting a decision from our office resumed on March 12, 2007. Thus, the ten business day deadline was March 20, 2007, and the fifteen business day deadline was March 27, 2007. However, the department did not request a ruling from this office until March 23, 2007. Furthermore, the department did not submit written comments and the information at issue until March 30, 2007. Consequently, we conclude that the department failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision from us.

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. 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* 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). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although you assert that the submitted information is excepted from disclosure pursuant to section 552.108 of the Government Code, section 552.108 is a discretionary exception to disclosure and not a compelling reason to overcome the presumption that the information is public. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). In failing to comply with section 552.301, the department waived its claims under section 552.108. We therefore determine that the department may not withhold the submitted information under section 552.108. However, sections 552.101, 552.117, and 552.130 can provide compelling reasons to overcome the presumption of openness under section 552.302; therefore, we will address your arguments under those exceptions.

The department claims that the submitted information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007 makes confidential the law enforcement records of a juvenile who, on or after September 1, 1997, engaged in delinquent conduct or conduct indicating a need for supervision. *See* Fam. Code § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. In this instance, the submitted information does not involve a juvenile as a suspect or offender. Therefore, we conclude that the submitted information is not confidential under section 58.007 and may not be withheld from disclosure on that basis under section 552.101 of the Government Code.

You claim that the social security numbers in the submitted information are excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone number, social security number, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Sections 552.117(a)(2), 552.117(a)(3), and 552.117(a)(5) except the same information for a licensed peace officer regardless of whether the officer made a timely election for confidentiality under section 552.024 or 552.1175 of the Government Code, employees of the Texas Department of Criminal Justice (“TDCJ”), and commissioned

security officers, respectively.¹ You do not inform this office, and review of the submitted information does not indicate, that any of the social security numbers belong to a current or former official or employee of the department, a licensed peace officer employed by the department, a TDCJ employee, or a commissioned security officer. Therefore, we find that none of the social security numbers may be withheld under section 552.117(a)(1), (2), (3), or (5).

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1),(2). Accordingly, pursuant to section 552.130, the department must withhold the Texas motor vehicle record information we have marked in the submitted offense report. The department must also withhold under section 552.130 the Texas driver's license numbers found in tracks 24 and 43 of the submitted CD of 9-1-1 calls.

In summary, pursuant to section 552.130 of the Government Code, the department must withhold the Texas motor vehicle record information we have marked in the submitted offense report and the Texas driver's license numbers found in tracks 24 and 43 of the submitted CD of 9-1-1 calls.² The remaining submitted information must be released.³

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

¹The term "peace officer" is defined by Article 2.12, Code of Criminal Procedure.

²We note that the submitted information includes the requestor's Texas driver's license number. Although the department would be required to withhold that information from the public under section 552.130 of the Government Code, which protects personal privacy, the requestor has a right of access to his own Texas driver's license information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Should the department receive another request for these same records from a person who would not have a right of access to the requestor's Texas driver's license information, the department should resubmit these records and request another decision. *See* Gov't Code §§ 552.301(a), .302.

³As noted above, the submitted information contains social security numbers. 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. The requestor has a right, however, to his own social security number. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

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).

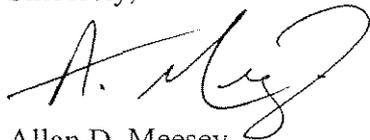
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Allan D. Meesey
Assistant Attorney General
Open Records Division

ADM/sdk

Ref: ID# 279900

Enc. Submitted documents

c: Mr. Dexter Carter
1200 Sunrise Drive #1301
Round Rock, Texas 78664
(w/o enclosures)