



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 25, 2007

Sheriff Kenneth Hammack  
Polk County Sheriff's Office  
1733 North Washington  
Livingston, Texas 77351

OR2007-12423

Dear Sheriff Hammack:

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# 290066.

The Polk County Sheriff's Office (the "sheriff") received a request for several categories of information pertaining to a specified incident. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We also understand you to claim that a portion of the submitted information is excepted from disclosure under section 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the request is for seventeen categories of information pertaining to the specified incident. You have only submitted a portion of the requested information for our review. Thus, to the extent any additional information existed on the date the sheriff received this request, we assume you have released it. If you have not released any such information, you 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).

Next, we note that you have redacted a social security number and driver's license numbers from the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body is prohibited from withholding information from a requestor without seeking a ruling from this office unless a statute authorizes such, or the governmental body

has received a previous determination for the information at issue. *See* Gov't Code § 552.301 (a); *see also* Open Records Decision No. 673 (2000) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301 of the Government Code). Pursuant to section 552.147(b) of the Government Code, all governmental bodies may redact social security numbers without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b). However, we are not aware of any law that authorizes the sheriff to withhold motor vehicle record information without requesting a decision from this office. Further, you do not assert, nor does our review of our records indicate, that the sheriff has been issued a previous determination authorizing it to withhold driver's license numbers without seeking a ruling from this office. Because we can discern the nature of the information that has been redacted, being deprived of this information does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"), 552.302.

We note that a portion of the submitted information is subject to a previous ruling issued by this office. On May 9, 2007, this office issued Open Records Letter No. 2007-05511(2007), in which we ruled that a portion of the requested information was excepted from public disclosure under section 552.108(a)(1) of the Government Code. As long as the pertinent facts and circumstances have not changed since the issuance of that prior ruling, we determine that the sheriff may continue to rely on our ruling in Open Records Letter No. 2007-05511 as a previous determination and withhold the information at issue under section 552.108(a)(1) in accordance with that decision. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling).

We now turn to your argument regarding the information that was not at issue in the previous ruling. Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime... if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You

state that the submitted information relates to a case that is pending presentation to the grand jury. Based upon this representation, we conclude that the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of the basic front page offense information, you may withhold the remaining information from disclosure based on section 552.108(a)(1).

In summary, the sheriff may continue to rely on our decision in Open Records Letter No.2007-05511 with respect to the information requested in that instance that is also at issue here. With the exception of basic information, the sheriff may withhold the remaining requested information under section 552.108 of the Government Code.<sup>1</sup>

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,

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/ma

Ref: ID# 290066

Enc. Submitted documents

c: Ms. Julie Hamrick  
Houssiere, Durant, & Houssiere, L.L.P.  
1990 Post Oak Boulevard, Suite 800  
Houston, Texas 77056  
(w/o enclosures)