



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2007

Mr. George F. Hyde
Denton, Navarro, Rocha, & Bernal
2517 North Main Avenue
San Antonio, Texas 78212

OR2007-14679

Dear Mr. Hyde:

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# 294428.

Bandera County (the "county"), which you represent, received a request for two sheriff's department reports pertaining to incidents that occurred on March 30, 2007 and June 14, 2007. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have only submitted the report responsive to the incident that occurred on June 16, 2007. Thus, we assume that you have released the report pertaining to the incident that occurred on March 30, 2007. If you have not released this report, you must do so now. See Gov't Code §§ 552.021, .221, .301, .302.

Next, we note that the submitted report falls within the scope of section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]" unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. *Id.* § 552.022(a)(1). In this instance, the submitted report is a completed report that is subject to section 552.022(a)(1). Although you seek to withhold this report under section 552.103 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. See *id.* § 552.007; *Dallas Area Rapid Transit v. Dallas*

Morning News, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the county may not withhold the submitted report under section 552.103. However, because information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will address your argument under this exception for the submitted report.

Section 552.108 provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). A governmental body claiming subsection 552.108(a)(2) or 552.108(b)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *Id.* You state that the requested information pertains to litigation currently pending on the docket of the Bandera County Court as cause number 07-00358. Thus, we find that the county has failed to demonstrate how the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Thus, the submitted report may not be withheld under either subsection 552.108(a)(2) or subsection 552.108(b)(2).

Finally, we note that a portion of the submitted report is subject to section 552.130 of the Government Code.¹ Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas

¹The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

agency is excepted from public release. *Id.* § 552.130(a)(1), (2). Accordingly, the county must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. As you raise no other exceptions to disclosure, the remaining information must be released 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,

A handwritten signature in black ink, appearing to read "M. Alan Akin". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

M. Alan Akin
Assistant Attorney General
Open Records Division

MAA/mcf

Ref: ID# 294428

Enc. Submitted documents

c: Ms. Susan Pullen
P.O. Box 2988
Bandera, Texas 78003
(w/o enclosures)