



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 29, 2007

Mr. Michael G. Morris  
Attorney at Law  
City Of Ingleside  
5350 South Staples, Suite 222  
Corpus Christi, Texas 78411-4684

OR2007-15726

Dear Mr. Morris:

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# 296095.

The City of Ingleside (the "city"), which you represent, received a request for ten categories of information, including: (1) any e-mails between the city's police chief and police captain regarding a specified incident involving two named individuals and their neighbors; (2) all dispatch logs regarding the specified incident; (3) all 911 tapes or recordings from the residence of two named individuals pertaining to the specified incident; (4) any phone messages, e-mails, or other written correspondence between a named individual and the city's police chief and captain from September 1, 2007 to the date of the request; (5) any phone messages, e-mails, or other written correspondence between a separate named individual and the city's police chief and captain from September 1, 2007 to the date of the request; (6) any video or police report pertaining to the specified incident; (7) any e-mails, memorandum, or written correspondence between police officers mentioning two named individuals from September 1, 2007 to the date of the request; (8) any e-mails or correspondence or Ingleside Police Department memorandum regarding two named individuals from September 1, 2007 to the date of the request; (9) all photographs taken at the scene of the specified incident of four named individuals; and (10) the city police chief's cell phone records and call history from September 1, 2007 to the date of the request. You state that the city does not have any responsive information pertaining to categories 1, 4, 5, 7, 8, 9, or 10 of the request.<sup>1</sup> You claim that the remaining requested information is excepted

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<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ.App.— San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

from disclosure under section 552.103 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(a) the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation made for or by the city, which is expressly public under section 552.022(a)(1). Although you claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code, we note that this exception is a discretionary exception under the Act that does not constitute "other law" for purposes of section 552.022.<sup>3</sup> Thus, the city may not withhold the submitted information under section 552.103 of the Government Code. However, because section 552.130 of the Government Code constitutes "other law" for purposes of section 552.022, we will consider the applicability of this exception to the submitted information.<sup>4</sup>

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). We note,

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<sup>2</sup>Although the city also raises sections 552.101 and 552.108, you do not explain to this office how these exceptions apply to the submitted information. Therefore, we presume you no longer assert these exceptions to disclosure. *See* Gov't Code §§ 552.301, .302.

<sup>3</sup>Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or which implicates the interests of third parties. *See 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 section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

<sup>4</sup>The 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).

however, that if the requestor in this instance is the attorney for the individuals to whom the Texas motor vehicle record information at issue pertains, he has a special right of access to such information under section 552.023 of the Government Code. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). If the requestor is not the attorney for the individuals at issue, then the city must withhold the Texas motor vehicle record information we have marked under section 552.130.

In summary, if the requestor is not the attorney for the individuals to whom the marked Texas motor vehicle record information pertains, such information must be withheld under section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.<sup>5</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, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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<sup>5</sup>We note that 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. We note, however, that if the requestor is the attorney for the individuals to whom the submitted social security numbers pertain, he has a right of access to his clients' social security numbers. *See generally* Gov't Code § 552.023(b).

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/eeg

Ref: ID# 296095

Enc. Submitted documents

c: Mr. Ben M. Sifuentes, Jr.  
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(w/o enclosures)