



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 1, 2008

Mr. Cary L. Bovey
Bovey & Bojorquez, L.L.P.
12325 Hymeadow Drive, Suite 2-100
Austin, Texas 78750

OR2008-01487

Dear Mr. Bovey:

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# 301275.

The City of Brenham (the "city"), which you represent, received a request for information pertaining to a specified incident. You state that you have provided some of the requested information to the requestor. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you claim that the submitted video of the incident at issue is subject to 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 common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review of the information in the submitted video, we find that it

is neither intimate nor embarrassing, or is of legitimate concern to the public. Thus, this video may not be withheld under section 552.101 on the basis of common-law privacy.

Next, you claim that the majority of the submitted incident report is subject to section 552.108 of the Government Code. Section 552.108 provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

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

Gov't Code § 552.108(a)(1), (2). Subsection 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body that claims section 552.108(a)(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. *See Gov't Code* §§ 552.108(a)(2), .301(e)(1)(A).

In this instance, you do not state that the submitted incident report relates to an ongoing criminal investigation or prosecution, nor do you explain how the release of this information would otherwise interfere with the detection, investigation, or prosecution of crime. Thus, we find you have failed to establish that any of the submitted information is excepted under section 552.108(a)(1). In addition, although you inform us that the submitted incident report relates to a case that has been decided by a jury and is now closed, you do not inform us whether the case at issue concluded in a result other than conviction or deferred adjudication. Therefore, we find that you have also failed to demonstrate the applicability of section 552.108(a)(2) to the submitted incident report. Accordingly, none of the submitted report may be withheld under section 552.108 of the Government Code.

You also assert that some of the submitted information is subject to section 552.130 of the Government Code, which 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 that the submitted

video also contains Texas license plate numbers. Accordingly, the city must withhold the Texas motor vehicle record information you have marked, as well as the legible Texas license plate numbers of vehicles in the submitted video, under section 552.130 of the Government Code. We note that if the city lacks the technical capability to redact the information that is subject to section 552.130 from the video, you must withhold the video in its entirety. *See* Open Records Decision No. 364 (1983).

Finally, you assert that some of the submitted information is subject to section 552.147 of the Government Code, which provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act.¹ Accordingly, the city may withhold the social security numbers you have marked under section 552.147 of the Government Code.

In summary, the city must withhold the Texas motor vehicle record information you have marked and the legible Texas license plate numbers in the submitted video under section 552.130. The city may withhold the social security numbers you have marked under section 552.147. The remaining submitted information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

¹We note that 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.

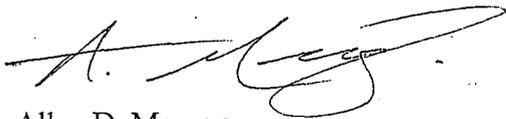
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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# 301275

Enc. Submitted documents

c: Ms. LaFayne McCall
5324 Pandale Valley Drive
McKinney, Texas 75071
(w/o enclosures)