



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 27, 2008

Mr. Marc J. Schnall
Langley & Banack, Incorporated
Trinity Plaza II
745 East Mulberry, Suite 900
San Antonio, Texas 78212-3166

OR2008-02661

Dear Mr. Schnall:

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# 303583.

The Selma Police Department (the "department"), which you represent, received two requests for information relating to a specified incident. You claim that some of the requested information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that the December 12th requestor has specifically excluded from the request social security numbers and Texas driver's license numbers. Thus, that information is not responsive to the December 12th request. Therefore, the department need not release that information in response to that request, and this ruling will not address that information as to the December 12th request.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have marked the

information that the department seeks to withhold under section 552.108(a)(1). You state that the marked information is related to a pending investigation. Based on your representation and our review, we agree that section 552.108(a)(1) is applicable in this instance. *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.*, 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). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes a "detailed description of the offense." *See Houston Chronicle*, 531 S.W.2d at 187; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note that you have marked the entire narrative portion of the submitted incident report as information you seek to withhold under section 552.108. The remaining portions of the incident report do not contain information sufficient to satisfy the requirement that a "detailed description of the offense" be released. Accordingly, we determine that the department must release a sufficient portion of the narrative section of the incident report to encompass a detailed description of the offense, to satisfy the required release of basic information pursuant to *Houston Chronicle*. *See* 531 S.W.2d at 187; ORD 127. The department may withhold the remaining information at issue under section 552.108(a)(1). We note that the department has the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." *Id.* § 552.130. We note that section 552.130 protects privacy interests. We also note that the December 10th requestor appears to be the spouse of an individual whose motor vehicle information is at issue. Thus, the December 10th requestor may have a right of access to his spouse's Texas motor vehicle record information if he is acting as her authorized representative. *See id.* § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Accordingly, the department must withhold the Texas motor vehicle record information you have marked from the December 10th requestor under section 552.130. However, if this requestor is acting as his spouse's authorized representative, then her Texas motor vehicle record information must be released to him.

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.¹ *Id.* § 552.147(a). The December 10th requestor, as spouse of one of the individuals whose information is at issue, has a right of access to his wife’s social security number if he is acting as her authorized representative. *See generally id.* § 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). If the requestor does not have a right of access to the information pursuant to section 552.023, then the department may withhold from the December 10th requestor the social security number of his spouse along with the other social security numbers you have marked under section 552.147 of the Government Code.

In summary, other than a sufficient portion of the narrative section of the incident report to constitute a detailed description of the offense, the department may withhold the marked information under section 552.108(a)(1) of the Government Code. The department must withhold from the December 10th requestor the information you have marked under section 552.130 of the Government Code. The department may withhold from the December 10th requestor the marked social security numbers pursuant to section 552.147 of the Government Code. However, if the December 10th requestor has a special right of access to his spouse’s information under section 552.023 of the Government Code, her marked driver’s license and social security numbers must be released to that requestor. The remaining responsive information must be released to both requestors.

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).

¹We also 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.

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 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 303583

Enc. Submitted documents

c: Mr. Joseph L. Mason
14807 Wilmington
Selma, Texas 78154
(w/o enclosures)

Mr. David C. Ray
8767 Ridge Mile Drive
San Antonio, Texas 78239
(w/o enclosures)