



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 7, 2008

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2008-03104

Dear Ms. De La Garza:

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# 304110.

The City of Houston (the "city") received a request for three specified incident reports. You state that you will release some of the responsive information. You claim that the remaining requested 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, we must address the city's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). You inform us, and provide documentation showing, that the city received the instant request for information on December 7, 2007. Accordingly, you were required to submit a request for a ruling from this office by December 21, 2007. Although you contend that the city attempted to mail the request for a ruling on December 18, 2007, you concede that the city failed to add sufficient postage to the mail at that time. *See id.* at § 552.308 (request is timely if sent by first class United States mail or common or contract carrier properly addressed with postage or handling charges prepaid and bears post office cancellation mark or receipt mark of the carrier indicating a time within that period). You did not submit the city's request for a ruling to this office until

December 27, 2007. Consequently, we find that the city failed to comply with the procedural requirements of section 552.301. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Section 552.108 of the Government Code is a discretionary exception to disclosure that a governmental body may waive. *See Gov't Code* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). However, the law enforcement interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). Because you inform us that the Harris County District Attorney's Office (the "district attorney") asserts a law enforcement interest in a portion of the submitted information, we will determine whether the city may withhold that information on behalf of the district attorney under section 552.108. As sections 552.101, 552.130, and 552.147 of the Government Code can provide compelling reasons to withhold information, we will address your arguments under these exceptions. Also, we note that some of the submitted information is subject to section 552.136 of the Government Code. Because this section can provide a compelling reason to overcome this presumption, we will apply this exception to the submitted information.¹

Section 552.108 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 inform us, and have provided an affidavit from the district attorney stating, that Exhibit 4 is related to a pending criminal case. The district attorney asserts that release of Exhibit 4 would interfere with the prosecution of the case. Based on your representation and the district attorney's affidavit, we conclude that section 552.108(a)(1) is applicable to Exhibit 4. *See Houston Chronicle*

¹The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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).

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*. See 531 S.W.2d 177; see also Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold Exhibit 4 on behalf of the district attorney under section 552.108(a)(1).²

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses criminal history record information (“CHRI”). CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. See Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. See generally *id.* §§ 411.090 -127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. Accordingly, the city must withhold the information we have marked under federal law and chapter 411.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license, driver’s license or permit, motor vehicle title, or registration issued by a Texas agency or relating to a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document is excepted from public release. Gov’t Code § 552.130(a). Accordingly, the city must withhold the information we have marked under section 552.130. We note, however, that the requestor may have an ownership interest in some of the vehicles. Thus, the requestor may have a right of access to the vehicle identification numbers and license plate numbers

²As our ruling is dispositive, we need not address your arguments under sections 552.101 and 552.130 for this information.

of those vehicles. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). Therefore, we rule conditionally. To the extent that the requestor has an ownership interest in the vehicles, and thus has a right of access under section 552.023, the city must release the vehicle identification numbers and license plate numbers of those vehicles. To the extent that the requestor does not have a right of access under section 552.023, the city must withhold the vehicle identification numbers and license plate numbers.

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136. The city must withhold the insurance policy number we have marked under section 552.136.

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.³ *Id.* § 552.147(a). Accordingly, the city may withhold the submitted social security numbers under section 552.147 of the Government Code.

In summary, with the exception of basic information, the city may withhold Exhibit 4 on behalf of the district attorney under section 552.108(a)(1) of the Government Code. The city must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The city must withhold the information we have marked under section 552.130 of the Government Code. To the extent that the requestor has an ownership interest in the vehicles, and thus has a right of access under section 552.023, the city must release the vehicle identification numbers and license plate numbers of those vehicles. The city must withhold the insurance policy number we have marked under section 552.136 of the Government Code. The city may withhold the submitted social security numbers under section 552.147 of the Government Code. The remaining 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

³We 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.

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 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 304110

Enc. Submitted documents

c: Ms. Cynthia Slatton
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(w/o enclosures)