



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 12, 2008

Ms. Pamela Smith  
Assistant General Counsel  
Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2008-03318

Dear Ms. Smith:

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# 304517.

The Texas Department of Public Safety Private Security Bureau ("PSB") received a request for "any and all alleged complaints concerning" the requestor's business. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code excepts from public 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). Section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. *See* Open Records Decision Nos. 493 (1988), 287 (1981). Section 552.108 generally does not apply to records created by an agency whose chief function is essentially regulatory in nature. Open Records Decision No. 199 (1978). An agency that does not qualify as a law enforcement agency may, under certain limited circumstances, claim that section 552.108 protects records in its possession. *See, e.g.*, Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 493, 272 (1981). If an administrative agency's investigation reveals possible criminal conduct that the administrative agency intends to report or has already reported to the

appropriate law enforcement agency, section 552.108 will apply to information gathered by the administrative agency if its release would interfere with law enforcement. See Gov't Code 552.108(a)(1); Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 493 at 2 (1988), 474 (1987), 372 at 4 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to incident).

You state that PSB is responsible for licensing and regulating private security companies, and other security-related entities. See Occ. Code ch. 1702. We understand that PSB investigates consumer complaints as well as violations of the Private Security Act, and that violations can carry criminal penalties. *Id.* You state that the submitted information relates to a currently pending PSB investigation that "could result in the filing of a criminal case [if] it is determined [that] criminal prosecution is warranted." Based on these representations and our review, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. 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). Thus, section 552.108(a)(1) is applicable to the submitted information.

We note, however, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Basic information includes the identification and description of the complainant. See 531 S.W.2d at 187; ORD 127. However, you seek to withhold the identification of complainants under section 552.101 of the Government Code.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that another statute makes confidential. You raise section 552.101 in conjunction with section 1702.084 of the Occupations Code. Section 1702.084 relates to public access to records of disciplinary actions "regarding a person regulated by the [PSB]." Occ. Code § 1702.084(a). Subsection 1702.084(d) provides that "[t]he [PSB] shall maintain the confidentiality of information regarding the identification of a complainant." *Id.* § 1702.084(d). You state that the submitted information pertains to the investigation by PSB of complaints against the requestor's company subject to PSB's authority. You also state that information in the complaint investigation file identifies the complainants. Based on your representations and our review of the submitted information, we agree that PSB must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 1702.084 of the Occupations Code. We find, however, that the remaining information you seek to withhold under this exception does not identify a complainant. Therefore, that information

is not confidential under section 1702.084, and may not be withheld under section 552.101 on that basis.

In summary, with the exception of basic information, PSB may withhold the submitted information under section 552.108 of the Government Code. We have marked the identifying information of complainants that must be withheld under section 552.101 of the Government Code in conjunction with section 1702.084 of the Occupations Code. The remaining basic 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 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 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# 304517

Enc. Submitted documents

c: Ms. Sandra J. Spencer  
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(w/o enclosures)