



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2008

Ms. Julie V. Pandya
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2008-05154

Dear Ms. Pandya:

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# 309298.

The Waco Police Department (the "department") received a request for all reports involving a named individual and the requestor. You state that you have released some of the requested information. You also state that you will redact social security numbers from the requested information pursuant to section 552.147 of the Government Code.¹ You claim that portions of the submitted information are excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code 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:

¹Section 552.147(b) 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.

- (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 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 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1); (a)(2), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

In this instance, you state that report number 07-02716 relates to a pending criminal case. Based upon this representation, we conclude that 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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the department may withhold report number 07-02716 and the submitted compact disks under section 552.108(a)(1). You also assert that report numbers 04-15491, 05-54334, 07-20099, 07-32054, and 07-06602 pertain to cases that concluded in final results other than conviction or deferred adjudication. We therefore agree that section 552.108(a)(2) is applicable to these reports.

We note, however, that 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Thus, the department must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the information at issue under section 552.108 of the Government Code.²

You also raise section 552.130 of the Government Code for portions of the remaining information. Section 552.130 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.” Gov't Code § 552.130.

²As our ruling is dispositive under section 552.108, we need not address your argument under section 552.130 of the Government Code with regard to this information.

Accordingly, the department must withhold the Texas motor vehicle record information you have marked pursuant to section 552.130 of the Government Code.

In summary, with the exception of basic information, the department may withhold report number 07-02716 and the submitted compact disks under section 552.108(a)(1), and report numbers 04-15491, 05-54334, 07-20099, 07-32054, and 07-06602 under section 552.108(a)(2). The Texas motor vehicle record information you have marked must be withheld under section 552.130 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 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,



Allan Meesey
Assistant Attorney General
Open Records Division

ADM/eeg

Ref: ID# 309298

Enc. Submitted documents

c: Ms. Boreshio Jackson
1320 Hood Street
Waco, Texas 76704
(w/o enclosures)