



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 24, 2008

Ms. Doreen McGookey
City Attorney
City of Sherman
P.O. Box 1106
Sherman, Texas 75091-1106

OR2008-05536

Dear Ms. McGookey:

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# 308959.

The Sherman Police Department (the "department") received a request for a specified police report and video regarding a traffic stop.¹ You claim that the requested information is 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 sample of information.²

First, we must address the department's obligation under section 552.301 of the Government Code. Within fifteen business days of receiving a request for information, a governmental body that wishes to withhold information from public disclosure must submit to this office a copy of the written request for information. Gov't Code § 552.301(e)(1)(B). The department failed to submit to this office a copy of the written request for information. We

¹As you have failed to submit a copy of the request for information, we take our description from your brief.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

therefore find that the department failed to comply with the procedural requirement of section 552.301 in requesting a ruling from this office.

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* Gov't Code § 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). This office has held that a compelling reason exists to withhold information when third party interests are at stake or when information is made confidential by another source of law. *See* Open Records Decision No. 150 (1977) (construing predecessor statute). Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to comply with section 552.301, you have waived section 552.108 and may not withhold any of the submitted information on that basis. However, section 552.130 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will consider whether section 552.130 requires the department to withhold the submitted information.

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 or a motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130(a). The department must withhold the Texas motor vehicle record information, which we have marked, under section 552.130 of the Government Code. The remaining 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,



Henisha D. Anderson
Assistant Attorney General
Open Records Division

HDA/mcf

Ref: ID# 308959

Enc. Submitted documents

c: Ms. Shelly Grecco
207 East Lamar Street
McKinney, Texas 75069
(w/o enclosures)