



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 30, 2008

Mr. Mark Shoesmith  
Assistant City Attorney  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901

OR2008-10333

Dear Mr. Shoesmith:

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# 317202.

The El Paso Police Department (the "department") received a request for 21 categories of information related to a specified arrest. You state that some information will be released to the requestor. You also state that you have no information responsive to a portion of the request.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.103, 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 address your statement that the department is unable to interpret and determine what documents the requestor is seeking in connection with item number five. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). We note that a governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. Open Records Decision No. 561 (1990). In this case, as you have submitted responsive information for our

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<sup>1</sup>We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.- San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3.

review and raised exceptions to disclosure for these documents, we consider the department to have made a good faith effort to identify information that is responsive to item number five, and we will address the applicability of your claimed exceptions to that information.

Next, we note that a portion of the submitted information contains court-filed documents. Information filed with a court is generally a matter of public record under section 552.022(a)(17) of the Government Code and may only be withheld if expressly confidential under other law. *See Gov't Code § 552.022(a)(17)* (information contained in public court record is not excepted from required disclosure under Act unless expressly confidential under other law). Although you assert this information is excepted under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions within the Act and not "other law" that makes information confidential. *See Open Records Decision Nos. 177 (1977)* (governmental body may waive statutory predecessor to section 552.108); 665 at 2 n. 5 (2000) (discretionary exceptions generally). Therefore, the court-filed documents we have marked may not be withheld under sections 552.103 or 552.108. However, because section 552.130 is "other law" for purposes of section 552.022, we will address your arguments regarding this section for the information subject to section 552.022.

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." Gov't Code § 552.130. In accordance with section 552.130 of the Government Code, the department must withhold the Texas motor vehicle record information we have marked in the court-filed documents.

Next, we address your arguments against the disclosure of the remaining information. 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." A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending criminal investigation and have provided us with representations from the Office of the District Attorney for the 34<sup>th</sup> Judicial District objecting to the release of the information because it would interfere with its prosecution. Based on these representations, we conclude that the release of the information at issue 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. 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).

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 Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold the remaining information from disclosure pursuant to section 552.108(a)(1).<sup>2</sup>

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.<sup>3</sup> Gov’t Code § 552.147. The department may withhold the arrestees’ social security numbers, which we have marked, pursuant to section 552.147.

In summary, with the exception of the information we have marked under section 552.130 of the Government Code, the department must release the court-filed documents pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, the department may withhold the remaining information from disclosure pursuant to section 552.108(a)(1) of the Government Code. The department may withhold the arrestees’ social security numbers under section 552.147 of the Government Code.

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). If the governmental body does not file suit over 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

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<sup>2</sup>As we are able to resolve this under section 552.108, we do not address your other claim for exception of the submitted information, except to note that basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

<sup>3</sup>We 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.

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,



Bill Longley  
Assistant Attorney General  
Open Records Division

BL/eeg

Ref: ID# 317202

Enc. Submitted documents

c: Mr. Sam Snoddy  
1518 Montana  
El Paso, Texas 79902  
(w/o enclosures)