



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2008

Mr. Renaldo L Stowers
Senior Associate General Counsel
Office of the General Counsel
University of North Texas System
P.O. Box 310907
Denton, Texas 76203-0907

OR2008-11707

Dear Mr. Stowers:

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# 319938.

The University of North Texas Police Department (the "department") received a request for information pertaining to a specified disorderly conduct citation. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

You inform this office that the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-07540 (2008). In that ruling, this office held that: (1) the submitted fingerprints must be withheld under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (2) with the exception of basic information, including the identification and description of the complainant, the department may withhold the marked information pursuant to section 552.108(a)(1) of the Government Code; and (3) except for information to which the requestor has a right of access pursuant to section 552.023 of the Government

¹We 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.

Code, the department must withhold the marked information under section 552.130 of the Government Code.

In regard to information subject to (1) section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code and (2) section 552.108(a)(1), we have no indication that the law, facts, and circumstances since the issuance of that prior ruling, therefore, we conclude that you must continue to rely on Open Records Letter No. 2008-07540 as a previous determination for that information. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we note that the circumstances have changed in regard to the information marked under section 552.130 of the Government Code because the requestor in the present request for information may not have a right of access to the information released, pursuant to section 552.023 of the Government Code, in the prior ruling. As such, this ruling may not be relied upon as a previous determination for the information subject to section 552.130. Therefore, we will consider your arguments for the information you have marked under section 552.130.

Next, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(a), (b). Pursuant to section 552.301(e), the governmental body must, within fifteen business days of receiving the request, submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). You state that the department received the request for information on May 1, 2008. However, you did not request a ruling from this office or submit the requested information for our review until June 20, 2008. Thus, the department failed to comply with the procedural requirements mandated by section 552.301.

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); Open Records Decision No. 319 (1982). A compelling reason exists

when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.130 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will consider the department's claim under this exception.

Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130 (a)(1), (2). The requestor has a right of access to his own motor vehicle record information pursuant to section 552.023 of the Government Code, and the department may not withhold it from him under section 552.130. *See id.* § 552.023 (b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Accordingly, with the exception of the information we have marked for release, the department must withhold the information you have marked, as well as the information we have marked, under section 552.130.

In summary, the department must continue to rely on Open Records Letter No. 2008-07540 as a previous determination for the information subject to (1) section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code and (2) section 552.108(a)(1). With the exception of the information we have marked for release, the department must withhold the marked information 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). 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 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

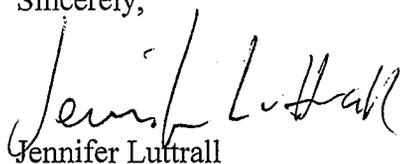
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 319938

Enc. Submitted documents

c: Mr. David Sindt
c/o Renaldo L Stowers
University of North Texas System
P.O. Box 310907
Denton, Texas 76203-0907
(w/o enclosures)