



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2008

Ms. Kristy Ashberry
City Secretary
City of Rockwall
385 South Goliad
Rockwall, Texas 75087

OR2008-13284

Dear Ms. Ashberry:

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# 323044.

The Rockwall Police Department (the "department") received a request for information pertaining to a specified arrest. You claim that the submitted 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 information.

Initially, we must address the department's obligations under section 552.301 of the Government Code. Section 552.301 prescribes 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). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

The request was received by the department on July 8, 2008. Your request for a decision from this office is dated and postmarked July 23, 2007. Accordingly, the department did not request a decision from this office within the ten-business-day period prescribed by subsection 552.301(b). *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Therefore, the submitted information is presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). In this instance, the department claims exception to disclosure under section 552.108

of the Government Code. Section 552.108 is discretionary in nature; it serves only to protect a governmental body's interests and may be waived. As such, it does not constitute a compelling reason to withhold information. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, the department may not withhold any of the submitted information under section 552.108 of the Government Code. However, we will address the department's claims under section 552.130, which can provide a compelling reason for non-disclosure under section 552.302.

Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Accordingly, we have marked Texas motor vehicle record information in the submitted information that is subject to section 552.130. However, we note that section 552.130 protects privacy interests. It appears that the marked Texas motor vehicle record information belongs to the requestor's husband. Thus, if the requestor is acting as the authorized representative of her husband, she has a right of access under section 552.023 to his Texas motor vehicle record information. *Id.* § 552.023(a) (a person's authorized representative has a special right of access to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests). If the requestor is not acting as an authorized representative, she does not have a right of access to her husband's Texas motor vehicle record information, and the department must withhold it under section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.¹

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

¹We note that the statement being released contains a social security number. 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. Gov't Code § 552.147. The requestor has a right, however, to her husband's social security number if the requestor is her husband's authorized representative. *See generally id.* § 552.023(b).

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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 323044

Enc. Submitted documents

c: Ms. Carolyn Hart Blanton
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Crandall, Texas 75114
(w/o enclosures)