



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 9, 2008

Ms. Holly C. Lytle
Assistant County Attorney
El Paso County, Texas
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2008-13884

Dear Ms. Lytle:

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# 329369.

The El Paso County Attorney's Office and the Constable Precinct #6 (collectively, the "county") received requests from the same law firm for information pertaining to the shooting of the requestor's client. You state that some of the requested information will be made available to the requestors, but claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by other statutes. Section 1701.454 of the Occupation Code governs the release of reports or statements submitted to the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") and provides as follows:

- (a) A report or statement submitted to the [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this section, a [TCLEOSE] member or other person may not release the contents of a report or statement submitted under this subchapter. The report or statement may be released only by the [TCLEOSE] employee having the responsibility to maintain the report or statement and only if:

(1) the head of a law enforcement agency or the agency head's designee makes a written request on the agency's letterhead for the report or statement accompanied by the agency head's or designee's signature; and

(2) the person who is the subject of the report or statement authorizes the release by providing a sworn statement on a form supplied by the commission that includes the person's waiver of liability regarding an agency head who is responsible for or who takes action based on the report or statement.

Occ. Code § 1701.454. Attachment B contains F-5 forms (Report of Separation of License Holder), which are made confidential by section 1701.454 of the Occupations Code; therefore, the department must withhold the F-5 forms we have marked pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. You also assert that the submitted L-1 forms (Report of Appointment/License Application) are confidential under section 1701.454; however, an L-1 form is not a report required to be filed with TCLEOSE under subchapter J of chapter 1701. Thus, the submitted L-1 forms are not confidential under section 1701.454, and the county may not withhold them under section 552.101 on that ground.

The L-1 forms contain information that is excepted under section 552.117 of the Government Code. Section 552.117(a)(2) excepts the home addresses and telephone numbers, social security numbers, and family member information of a peace officer as defined by Article 2.12 of the Code of Criminal Procedure, regardless of whether the officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2); see Open Records Decision No. 622 (1994). The county must withhold the information we have marked under section 552.117(a)(2).

The L-1 forms also contain information that is excepted under section 552.130 of the Government Code, which 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). Thus, the county must withhold the Texas motor vehicle record information we have marked under section 552.130.

You assert that Attachment C is excepted under section 552.108 of the Government Code. Section 552.108(a)(1) 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 Gov't Code §§ 552.108(a)(1), 552.301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Attachment C relates to a pending criminal investigation. Based on this representation, we conclude that the 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. 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).

However, 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). Basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of the basic front-page offense and arrest information, the county may withhold Attachment C under section 552.108(a)(1).

To conclude, the county must withhold the F-5 forms we have marked under section 552.101 in conjunction with section 1701.454 of the Occupations Code and the information we have marked under sections 552.117 and 552.130 of the Government Code. With the exception of basic information, the county may withhold Attachment C under section 552.108 of the Government Code. The county must release the remaining information.

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

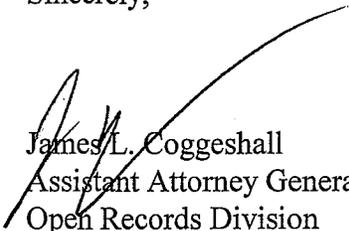
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ma

Ref: ID# 329369

Enc. Submitted documents

c: Ms. Laura Enriquez
Mr. Jeffrey T. Lucky
Lucky, Enriquez, Piacenti & Smigiel, P.C.
300 East Main, Suite 630
El Paso, Texas 79901
(w/o enclosures)