



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 19, 2008

Mr. Gregory A. Alicie  
Open Records Specialist  
Baytown Police Department  
3200 North Main Street  
Baytown, Texas 77521

OR2008-15907

Dear Mr. Alicie:

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# 328704.

The Baytown Police Department (the "department") received three requests for a specific police report. You state that you will redact full and partial social security numbers under section 552.147 of the Government Code.<sup>1</sup> 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 procedural obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving a request (1) general 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. *See Gov't Code § 552.301(e)*. As of the date of this letter, you have not submitted to this office a copy of the first written

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<sup>1</sup>Section 552.147(b) 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.

a copy of the first written request for information. We therefore find that the department failed to comply with the procedural requirements of section 552.301 in requesting a ruling from this office.

Generally, a governmental body's failure to comply with section 552.301 results in the waiver of its claims under the exceptions at issue, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *Id.* § 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). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 177 (1977). Section 552.108 is discretionary in nature, and serves only to protect a governmental body's interests; as such, it may be waived. *See* Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Consequently, the department may not withhold any of the submitted information pursuant to section 552.108 of the Government Code. However, because section 552.130 of the Government Code is a mandatory exception to disclosure, we will consider the applicability of this exception.

Section 552.130 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. Therefore, the department must withhold the information we have marked under section 552.130.

We note the submitted information contains insurance policy numbers. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential."<sup>2</sup> *Id.* § 552.136(b). Accordingly, the department must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

We note, however, because sections 552.130 and 552.136 protect personal privacy, the requestor named in the report has a right of access to his own Texas motor vehicle information and insurance policy number. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). It also appears that the second and third requestors may be the authorized representative of the individuals whose information is contained in the submitted report. If so, these requestors have a right of access to their client's confidential information

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

under section 552.023. *Id.* § 552.023. However, the remaining information subject to sections 552.130 and 552.136 must be withheld.

In summary, the department must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. However, the first requestor has a right of access to his own confidential information. Additionally, if the second and third requestors are the authorized representatives of the individuals in the report, they have a right of access to their own client's confidential information. 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,

  
Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/ma

Ref: ID# 328704

Enc. Submitted documents

c: 3 Requestors  
(w/o enclosures)