



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2009

Ms. Jennifer Tharp
Chief Civil Prosecutor
Comal County Criminal District Attorney
150 North Seguin Avenue, Suite 314
New Braunfels, Texas 78130

OR2009-01059

Dear Ms. Tharp:

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# 333135.

The Comal County Criminal District Attorney (the "district attorney") received a request for information regarding a specified incident. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

Initially, we note the district attorney was late in providing this office with the requested information. Section 552.301(e) of the Government Code requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that

¹In addition to section 552.108 of the Government Code, you also initially raised sections 552.101 through 552.148. However, you have not submitted arguments explaining how these exceptions apply to the submitted information. Therefore, we presume that you have withdrawn these exceptions. See Gov't Code §§ 552.301, 552.302.

the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See* Gov't Code § 552.301 (e)(1)(A)-(D). The current request was received by the district attorney on October 28, 2008. Accordingly, the fifteenth business day was November 19, 2008. You did not submit a copy of the specific information requested or representative samples until November 20, 2008. Consequently, we find that the district attorney failed to comply with the procedural requirements of section 552.301 of the Government Code.

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 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.150 (1977). Section 552.108 is a discretionary exception and, as such, does not generally provide a compelling reason to withhold information. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Consequently, the district attorney may not withhold any of the submitted information under section 552.108. We note, however, that section 552.130 of the Government Code is applicable to some of the submitted information.² Because this section can provide a compelling reason to withhold information, we will address whether the submitted information must be withheld under this section.

Section 552.130 of the Government Code excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). The district attorney must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code. The remaining information must be released to the requestor.³

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

³We note that the submitted information 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.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/jb

Ref: ID# 333135

Enc. Submitted documents

cc: Requestor
(w/o enclosures)