



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2011

Ms. Melissa Westen
Police Officer
City of Westworth Village
311 Burton Hill Road
Westworth Village, Texas 76114

Ms. Carol Ann Borges
City Secretary
City of Westworth Village
311 Burton Hill Road
Westworth Village, Texas 76114

OR2011-04221

Dear Ms. Westen and Ms. Borges:

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# 412680.

The City of Westworth Village Police Department (the "department") received a request for information related to a specified incident. You claim the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have

considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we must address the department's procedural obligations under the Act. Pursuant to section 552.301(b), the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). 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 the 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 id.* § 552.301(e). The department received the present request on December 30, 2010. However, you did not request a ruling from this office until January 18, 2011, and, you did not submit a representative sample of the responsive information until March 15, 2011. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find that the department failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). However, the interests of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision Nos. 586 (1991), 469 (1987). You have provided correspondence from the Tarrant County District Attorney's Office (the "district attorney") asserting the district attorney's objection to the release of the submitted information. Therefore, we will consider whether the department may withhold the

¹We assume 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.

submitted information under sections 552.103 and 552.108 of the Government Code on behalf of the district attorney.

Next, we note that the information you have submitted includes the blood test results of an arrestee's blood alcohol content. Full information concerning the analysis of the specimen must be made available upon the request of the person who has given specimens at the request of a peace officer. Transp. Code § 724.018. Here, the requestor is the individual who submitted the specimen. Thus, the department must release the blood test results to the requestor.

Next, we note the submitted information contains documents that have been filed with a court. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless it is confidential under other law. *See* Gov't Code § 552.022(a)(17). Although the district attorney asserts this information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, sections 552.103 and 552.108 do not constitute other law for purposes of section 552.022(a)(17). Accordingly, the department may not withhold the submitted court filed documents, which we have marked, under sections 552.103 and 552.108. As you raise no additional exceptions to disclosure of the court filed documents, they must be released.

Section 552.108(a)(1) of the Government Code 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.” Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note the remaining information includes a statutory warning and a notice of suspension. Because copies of the warning and notice have been provided to the arrestee, we find that their release will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the department may not withhold the statutory warning or the notice of suspension under section 552.108(a)(1). The district attorney states that the submitted information relates to a pending appeal of a criminal case. The district attorney further states release of this information at this time would interfere with the pending criminal appeal. Based on these representations and our review, we determine release of the information at issue 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. Civ. App.—Houston [14th Dist.] 1975)

(court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note, 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*. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney.²

We note basic information includes an arrestee's social security number. We understand you have redacted social security numbers under section 552.147(b) of the Government Code.³ Section 552.147(a) excepts the social security number of a living individual from public disclosure. Gov't Code § 552.147. However, the requestor is the arrestee. As such, he has a right of access to information pertaining to himself that would otherwise be withheld on the basis of privacy. See *id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or person's representative, solely on grounds that information is considered confidential by privacy principles). Because section 552.147 is based on principles of privacy, the requestor's social security number may not be withheld from him. The remaining basic information must also be released.

You also claim the statutory warning and the notice of suspension are excepted under section 552.103 of the Government Code. Section 552.103 provides in relevant part as follows:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

²As our ruling is dispositive for the information subject to section 552.108(a)(1), we do not address your remaining claim against disclosure for this information, except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

³ 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.

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Id. § 552.103(a), (c). The purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See id.* § 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

We note the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information that is related to litigation through discovery procedures. *See* ORD 551 at 4-5. Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. As discussed above, the submitted statutory warning and notice of suspension were provided to the arrestee; thus, the statutory warning and notice of suspension were seen by the opposing party to the litigation. Therefore, the statutory warning and notice of suspension may not be withheld under section 552.103 of the Government Code. As you raise no further exceptions to their disclosure, the statutory warning and the notice of suspension must be released to this requestor.⁴

In summary, the department must release the blood alcohol test results, court filed documents, statutory warning, and notice of suspension. Except for basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

⁴We note that the requestor has a special right of access to his Texas driver's license number, which is being released in this instance. Gov't Code § 552.023 (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests).

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, toll free, at (888) 672-6787.

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/tf

Ref: ID# 412680

Enc. Submitted documents

c: Requestor
(w/o enclosures)