



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 19, 2011

Chief Gregory L. Grigg  
Deer Park Police Department  
2911 Center Street  
Deer Park, Texas 77536-4942

OR2011-18649

Dear Chief Grigg:

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# 440650 (Request #55).

The Deer Park Police Department (the “department”) received a request for six categories of information related to a specified offense report. You indicate the department has no information responsive to parts three and six of the request.<sup>1</sup> You state some of the requested information has been released. You indicate an e-mail address and a driver’s license number were redacted from that information pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> You contend the rest of the requested information is not subject to

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<sup>1</sup>We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision, including a Texas driver’s license number under section 552.130 of the Government Code and an e-mail address of a member of the public under section 552.137 of the Government Code. On September 1, 2011, however, the Texas Legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See Gov’t Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d)-(e). Thus, the statutory amendments to section 552.130 of the Government Code superceded Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Decision No. 684.

disclosure under the Act. You also believe some of the remaining information may implicate the interests of General Motors (“GM”). You inform us GM was notified of the present request for information and of its right to submit arguments to this office as to why the information at issue should not be released.<sup>3</sup> We have considered your arguments and reviewed the information you submitted.

Initially, we address the information you contend is not subject to the Act. The Act is applicable to “public information,” which consists of

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov’t Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined that certain computer information such as source codes, documentation information and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property, is not the kind of information made public under section 552.021 of the Government Code. *See* ORD 581 at 6 (construing predecessor to Act). Having reviewed the information you contend is not subject to the Act, we agree the Internet Protocol (IP) addresses and host name you have marked are not public information for purposes of section 552.002 and thus are not subject to disclosure under the Act. *See* Gov’t Code § 552.021. Therefore, the marked IP addresses and host name need not be released to the requestor.

Next, we note the department obtained some of the remaining information at issue pursuant to grand jury subpoenas. The judiciary is expressly excluded from the requirements of the Act. *See* Gov’t Code § 552.003(1)(B). This office has determined that for purposes of the Act, a grand jury is part of the judiciary and is therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Moreover, records kept by another person or entity acting as an agent for a grand jury are considered to be records in the constructive possession of the grand jury and are therefore not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 398 (1983); *but see* ORD 513 at 4 (defining limits of judiciary exclusion). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean such information is in the grand jury’s constructive possession when the same information also is held in the other person’s or entity’s own capacity. Information held by another person or entity but not produced at the direction of

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<sup>3</sup>*See* Gov’t Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov’t Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. Therefore, to the extent the department has possession of the remaining information at issue as an agent of the grand jury, any such information is in the grand jury's constructive possession and is not subject to the Act. This decision does not address the public availability of any such information, which need not be released to the requestor. To the extent the department does not have possession of the remaining information as an agent of the grand jury, any such information is subject to the Act and must be released unless the information falls within the scope of an exception to disclosure.

With respect to any remaining information that is subject to the Act, we note the department did not comply with its deadlines under section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure no later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.301(e) requires the governmental body to submit to this office, no 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 at issue; (2) a copy of the request for information; (3) a signed statement of the date of the governmental body's receipt of the request or evidence sufficient to establish the date of receipt; and (4) the specific information at issue or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). Section 552.302 of the Government Code provides that 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; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

Although you state the department received the present request for information on October 7, 2011, you acknowledge the request was previously received on September 1, 2011 but was "not fulfilled at that time." The department requested this decision by United States mail meter-marked October 21. *See Gov't Code* § 552.308 (prescribing requirements for proof of compliance with Gov't Code § 552.301). Thus, the department did not comply with section 552.301 in requesting this decision, and the remaining information at issue is therefore presumed 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). Accordingly, we will determine whether any of the remaining information must be withheld to protect the interests of GM. Additionally, we note some of the remaining information falls within the scope of sections 552.130 and 552.137 of the Government

Code.<sup>4</sup> Therefore, because the applicability of those sections can provide compelling reasons for non-disclosure under section 552.302, we will address sections 552.130 and 552.137.

An interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to the party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have not received any correspondence from GM. Therefore, because GM has not demonstrated any of the remaining information is proprietary for purposes of the Act, the department may not withhold any of the information at issue on the basis of any interest GM may have in the information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. *See* Gov't Code § 552.130(a)(1). The department must withhold the driver's license numbers we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code states "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure or the e-mail address falls within the scope of section 552.137(c). *Id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an internet website address, or an e-mail address a governmental entity maintains for one of its officials or employees. We have marked personal e-mail addresses that do not fall within the scope of section 552.137(c). The department must withhold the marked e-mail addresses under section 552.137 of the Government Code unless the owners of the e-mail addresses have affirmatively consented to their public disclosure.

In summary, (1) the marked Internet Protocol (IP) addresses and host name are not public information for purposes of section 552.002 of the Government Code and thus are not subject to disclosure under the Act and need not be released to the requestor; (2) to the extent the department has possession of the remaining information at issue as an agent of the grand jury, any such information is in the grand jury's constructive possession, is not subject to the Act, and need not be released to the requestor; and (3) to the extent the remaining information is subject to the Act, the department (a) must withhold the marked driver's license numbers under section 552.130 of the Government Code; (b) must withhold the marked e-mail addresses under section 552.137 of the Government Code, unless the owners

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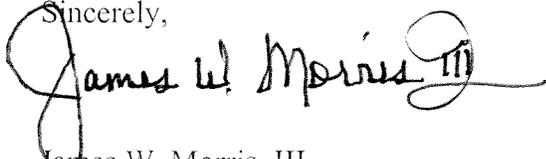
<sup>4</sup>This office will raise sections 552.130 and 552.137 on behalf of a governmental body, as these sections are mandatory exceptions to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

of the e-mail addresses have affirmatively consented to their disclosure; and (c) must release the rest of the information.

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](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,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J" and a long, sweeping underline.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/eb

Ref: ID# 440650

Enc: Submitted documents

c: Requestor  
(w/o enclosures)