



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 5, 2012

Mr. Michael Lee Garza
Assistant District Attorney
Hidalgo County
100 North Closner, Room 303
Edinburg, Texas 78539

OR2012-10331

Dear Mr. Garza:

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# 458047.

The Hidalgo County Sheriff's Office (the "sheriff's office") received a request for all information related to two specified cases; all information related to two named individuals; all information related to two specified addresses; and a list of offenses generated in the vicinity of the specified addresses. You state the sheriff's office provided the requestor with a redacted copy of the first page of one of the requested incident reports. You claim the submitted 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.

Initially, we note you have only submitted a copy of one of the requested incident reports. We assume that, to the extent any additional responsive information existed when the sheriff's office received the request for information, the sheriff's office has released it to the requestor. If not, then the sheriff's office must do so immediately. *See Gov't Code* §§ 552.006, .301, .302; *Open Records Decision No. 664 (2000)*.

Next, we must address the sheriff's office's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See Gov't Code* § 552.301(b). You state, and the request reflects, the sheriff's office received the request for information on April 10, 2012. Therefore, the sheriff's office's ten-business-day deadline was April 24, 2012. The sheriff's office

requested a ruling from this office via a letter meter-marked April 26, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, the sheriff's office failed to request a decision from this office within the ten-business-day period prescribed by subsection 552.301(b).

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 that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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); Open Records Decision No. 630 (1994). Section 552.108 of the Government Code is a discretionary exception to disclosure that may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). In failing to comply with the procedural requirements of section 552.301, the sheriff's office has waived its claim under section 552.108 and may not withhold any of the requested information on that basis. However, we note a portion of the information at issue is subject to sections 552.130 and 552.136 of the Government Code, which can provide compelling reasons for non-disclosure.¹ Therefore, we will consider the applicability of these exceptions.

Section 552.130 excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(2). We have marked information that is subject to section 552.130(a)(2) of the Government Code. However, we note section 552.130 is based on privacy principles and the requestor may have a right of access to the information at issue. *See id.* § 552.023 (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). In this instance, the requestor is an agent of the insurance company providing coverage for the motor vehicle listed in the submitted information. As such, the requestor may have a right of access to the information at issue under section 552.023 of the Government Code as an authorized representative of the insured party. Thus, if the requestor has a right of access to the information we have marked under section 552.130, the sheriff's office may not withhold this information from the requestor.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Conversely, if the requestor does not have a right of access to this information, the sheriff's office must withhold this information under section 552.130 of the Government Code.

We note the submitted information contains bank account and routing numbers. Section 552.136 of the Government Code provides 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." Gov't Code § 552.136(b). An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *Id.* § 552.136(a). The sheriff's office must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code.

In summary, the sheriff's office must withhold the information we have marked under section 552.130 of the Government Code unless the requestor has a right of access to the information under section 552.023 of the Government Code. The sheriff's office must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code. The remaining information must be released.²

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,



Benjamin A. Bellomy
Assistant Attorney General
Open Records Division

BAB/dls

²The information being released 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. See Gov't Code § 552.147(b).

Ref: ID# 458047

Enc. Submitted documents

c: Requestor
(w/o enclosures)