



January 10, 2002

Mr. Bob Taylor
Mayor
City of Tolar
P.O. Box 100
Tolar, Texas 76476

OR2002-0182

Dear Mr. Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157177.

The City of Tolar (the "city") received a request for cellular telephone bills for the mayor and police department for August and September 2001, as well as "detail action reports for every officer, for every day they worked, for" July, August, and September of 2001. You indicate that you have released some of the requested information. However, you claim that portions of the requested information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We begin by noting that all of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body

Gov't Code § 552.022(a)(1), (3). Thus, the telephone billing records are subject to subsection (a)(3) while the activity reports are subject to subsection (a)(1). Because section 552.108 is a discretionary exception, it is not considered "other law" for the purpose of section 552.022. Consequently, the telephone billing records cannot be withheld under section 552.108. However, even though section 552.108 is not considered other law, section 552.022(a)(1) explicitly provides that information fitting under that provision may still be withheld under section 552.108. Therefore, we will consider your section 552.108 argument with respect to the submitted activity reports.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the highlighted portions of the requested activity reports relate to pending criminal investigations. Based upon this representation, we conclude that the release of the highlighted portions of the activity reports 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Consequently, we find that you may withhold the highlighted information in the activity reports under section 552.108(a)(1).

We also note that the submitted telephone billing records contain telephone numbers that may be protected from disclosure under section 552.117 of the Government Code. Section 552.117 provides, in relevant part:

Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

- (1) a current or former official or employee of a governmental body, except as provided by Section 552.024;
- (2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024.

Thus, section 552.117(1) protects the home addresses and telephone numbers, social security numbers, and family member information of government employees who request that this information be kept confidential under section 552.024. On the other hand, peace officers' home addresses and phone numbers, social security numbers, and family member information must be withheld under section 552.117(2), regardless of whether an election was made to keep such information confidential under section 552.024. To the extent the requested information contains the home phone numbers of peace officers or their family members, this information must be withheld under section 552.117(2), regardless of whether an election was made by the officer to keep this information confidential. *See* Open Records Decision No. 670 at 6 (2001). To the extent the requested information contains the home phone numbers or family member information of city employees or officials who are not peace officers you must withhold this information only if the employee or official elected to keep his or her home telephone number confidential under section 552.024 of the Government Code prior to the date on which the request for this information was made. *See* Open Records Decision No. 530 at 5 (1989).

In summary, the city may withhold the highlighted information in the activity reports under section 552.108(a)(1). The city must withhold the home telephone numbers of peace officers and their family members under section 552.117(2). The city must also withhold the home telephone numbers of other city employees or officials and their family members under section 552.117(1) to the extent an employee or official elected to keep his or her telephone number confidential under section 552.024 prior to the city's receipt of the instant request for information. The city must release the remainder of the submitted information.

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 appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal 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, within 10 calendar days of this ruling, the

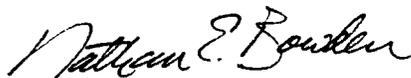
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public 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 Texas Building and Procurement Commission 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 157177

Enc: Submitted documents

c: Ms. Roberta Elmore
P.O. Box 28
Tolar, Texas 76476
(w/o enclosures)