



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 3, 2003

Ms. Tenley Aldredge
Assistant County Attorney
Travis County
P. O. Box 1748
Austin, Texas 78767

OR2003-2257

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178738.

The Travis County Sheriff's Office (the "sheriff") received a request for a specified incident report. You claim that the requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that section 552.301(e) of the Government Code requires in pertinent part that a governmental body that requests an attorney general decision under section 552.301(a) must submit to the attorney general, within a reasonable time, but not later than the fifteenth business day after the date of receiving the request, written comments stating the reasons why any stated exceptions apply that would allow any portion of the requested information to be withheld from disclosure and a copy of the specific information requested, or representative samples of it if a voluminous amount of the information was requested, labeled to indicate which exceptions apply to which parts of the copy. *See* Gov't Code § 552.301(e). You state that the sheriff received this request for information on January 14, 2003. Thus, the sheriff was required to submit to us written comments stating the reasons why any stated exceptions apply that would allow any portion of the requested information to be withheld from disclosure and a copy of the specific information requested, or representative samples of it, on or before February 5, 2003. We note that the sheriff did not submit such information to us until February 6, 2003. Therefore, we find that the sheriff failed to request a decision from our office in accordance with section 552.301 of the Government Code.

Because the sheriff failed to comply with the procedural requirements of section 552.301, the requested information is now presumed public. *See* Gov't Code § 552.302; *see also*

Hancock v. State Bd. of Ins., 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The sheriff must demonstrate a compelling interest in order to overcome the presumption that the information is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the requested information confidential or when third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although the sheriff claims that the requested information is excepted from disclosure pursuant to section 552.103 of the Government Code, we note that this particular exception is a discretionary exception to disclosure under the Public Information Act that does not constitute a compelling interest sufficient to overcome the presumption that the requested information is now public.¹ Accordingly, we conclude that the sheriff may not withhold any portion of the submitted information under section 552.103 of the Government Code.

Further, you assert that the law enforcement interests of the Criminal Division of the Travis County Attorney's Office furnish a compelling reason for withholding the submitted information under section 552.108 of the Government Code. We recognize that the need of a law enforcement agency, other than the one that received the written request, to withhold information from disclosure may be a compelling reason to overcome the presumption that the information is public. *See* Open Records Decision No. 586 (1991). However, the Travis County Attorney's Office is handling this open records request on behalf of the sheriff. We cannot excuse your untimeliness in seeking a decision on behalf of the sheriff based on the needs of your own office. *Cf.* Open Records Decision No. 586 (1991) (law enforcement interests of Texas Department of Public Safety provide compelling reason to overcome district attorney's failure to comply with ten day deadline). Accordingly, we conclude that the sheriff may not withhold any portion of the submitted information pursuant to section 552.108 of the Government Code. However, since section 552.130 of the Government Code constitutes a compelling interest that is sufficient to overcome the presumption that the requested information is now public, we will address that claim.

Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130.

¹ Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 473 (1987) (governmental body may waive section 552.111), 522 at 4 (1989) (discretionary exceptions in general); *see also 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). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

Accordingly, we conclude that the sheriff must withhold the Texas motor vehicle information that we have marked pursuant to section 552.130. The sheriff must release the remaining submitted information to the requestor.

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).

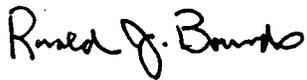
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 178738

Enc. Marked documents

c: Mr. Tim McGillicuddy
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(w/o enclosures)