



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 2, 2003

Mr. Leonard V. Schneider
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2003-4544

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183700.

The City of Rosenberg (the "city"), which you represent, received a written request for the following categories of information regarding a criminal investigation: 1) all documents pertaining to expenditures in connection with the investigation, 2) all arrest warrants, search warrants, and probable cause affidavits, and 3) all communications made by city employees regarding the investigation. You state that most of the responsive information will be released to the requestor. You contend, however, that portions of the information you submitted to this office as responsive to the request are excepted from required disclosure pursuant to sections 552.101, 552.103, 552.108, 552.130, and 552.136 of the Government Code.¹

You contend that the submitted documents Bates stamped 000019, 000019(a), and 000020 are excepted from required public disclosure pursuant to section 552.108(a)(1) of the Government Code, which excepts from required public 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." Section 552.108(a)(1) protects information pertaining to a pending criminal investigation or prosecution because it is presumed that the release of such information would interfere with the detection, investigation, or prosecution

¹You inform us, however, that the city "was unable to locate a copy of an 'arrest warrant.'" The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

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). You state that documents 000019, 000019(a), and 000020 pertain to an ongoing criminal investigation and prosecution of a charge of theft by a public servant. Based on your representations and our review of these documents, we conclude that the city may withhold these three documents pursuant to section 552.108(a)(1) of the Government Code.²

Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 at 1 (1982), we will raise other exceptions intended to protect information made confidential by law because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Government Code § 552.352. In this regard, we note that one of the submitted records contains information required to be withheld pursuant to section 552.117(2) of the Government Code. Section 552.117(2) protects, *inter alia*, the home address of “a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code.” Unlike non-peace officer public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988). We have marked the information in the document Bates stamped 000010 that the city must withhold pursuant to section 552.117(2) if the peace officer is still commissioned.

Section 552.130(a)(1) of the Government Code requires the city to withhold “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state.” Accordingly, the city must withhold the Texas driver’s license numbers that we have marked pursuant to section 552.130(a)(1) of the Government Code. Also, section 552.130(a)(2) of the Government Code requires the withholding of information relating to “a motor vehicle title or registration issued by an agency of this state.” Consequently, the city must withhold the VIN number that we have marked pursuant to section 552.130(a)(2).

You also seek to withhold certain account numbers contained in the submitted documents. Section 552.136 of the Government Code makes certain account numbers confidential and provides in relevant part:

- (a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

²Because we find that these three documents are exempted from required public disclosure under section 552.108, we need not address your section 552.103 arguments regarding these documents.

(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.

(b) Notwithstanding 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. After reviewing the submitted documents, we agree that some of the information you have highlighted must be withheld pursuant to section 552.136, and we have marked those documents accordingly. However, the remaining information you highlighted for purposes of this exception must be released.

In summary, the city may withhold documents 000019, 000019(a), and 000020 in their entirety pursuant to section 552.108(a)(1). We have marked the information in document 000010 that the city must withhold pursuant to section 552.117(2) if the peace officer is still commissioned. All Texas drivers' license numbers and VIN numbers, which we have marked, must be withheld pursuant to section 552.130. The account numbers we have marked must be withheld pursuant to section 552.136. The city 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

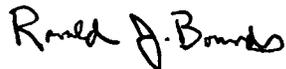
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure 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/RWP/sdk

Ref: ID# 183700

Enc: Submitted documents

c: Mr. Eric Hanson
Houston Chronicle
801 Texas Avenue
Houston, Texas 77002
(w/o enclosures)