



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2004

Ms. Jeanette Kimball
Anderson County Sheriff's Office
1200 E. Lacy
Palestine, Texas 75801

OR2004-5168

Dear Ms. Kimball:

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# 203843.

The Anderson County Sheriff's Office (the "sheriff") received two requests from the same requestor for a specific offense report and the names of two arresting officers. You state and provide documentation showing that you have released some information to the requestor. You claim that the remaining requested 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 must address the sheriff's obligations under the Act. Under section 552.301(e), a governmental body that wishes to withhold information from public disclosure must submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). However, you have failed to submit a copy of the specific information you wish to withhold, which you refer to as the "arrest details." Based on the foregoing, we conclude that you failed to comply with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) 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 Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). We understand the sheriff to claim that the remainder of the requested information is excepted from disclosure under section 552.108 of the Government Code. We note, however, that this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). The sheriff's claim under section 552.108 does not provide a compelling reason for non-disclosure under section 552.302. *But see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to Gov't Code § 552.108 can provide compelling reason for non-disclosure). Therefore, the sheriff may not withhold the requested information that it has failed to submit to this office under section 552.108. As the sheriff claims no other exception to the disclosure of the information it has failed to submit to this office, all of this information must be released to the requestor.

You advise and provide documentation showing that you have released the "book in," "book out," "bond," "magistrate," and "officers names" to the requestor. We note, however, that you have redacted the arrestee's driver's license number, social security number and photograph from the book in document, which you have released to the requestor in redacted form. Because you have not yet released this information to the requestor, we will address your claim that section 552.108 is applicable to the driver's license number, social security number and photograph.

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 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 requested information that you have redacted relates to a pending criminal prosecution. Based upon this representation, we conclude that you have established the applicability of section 552.108 to this information; therefore the arrestee's driver's license number and photograph may be withheld pursuant to this exception. *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).

However, an arrestee's social security number is considered basic information and therefore may not be withheld under section 552.108. *See generally* Gov't Code § 552.108(c); *Houston Chronicle*; Open Records Decision No. 127 (1976). We note, however, that social security numbers may be withheld in some circumstances under section 552.101 of the

Government Code.¹ A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the arrestee's social security number is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the sheriff pursuant to any provision of law, enacted on or after October 1, 1990. However, the laws regarding the confidentiality of social security numbers are intended to protect individuals' privacy. Therefore, if the social security number at issue belongs to the requestor, it may not be withheld from him on the basis of federal law. *See* Gov't Code § 552.023(b) (governmental body may not deny access to information to person to whom it relates on grounds that information is considered confidential solely on basis of privacy).

In summary, the arrestee's driver's license number and photograph may be withheld pursuant to section 552.108. Although an arrestee's social security number is considered basic information and, therefore, cannot be withheld under section 552.108, prior to releasing it, you should ensure that the social security number was not obtained or is not maintained by the sheriff pursuant to any provision of law enacted on or after October 1, 1990. All remaining information not submitted to this office must be released 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).

¹The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

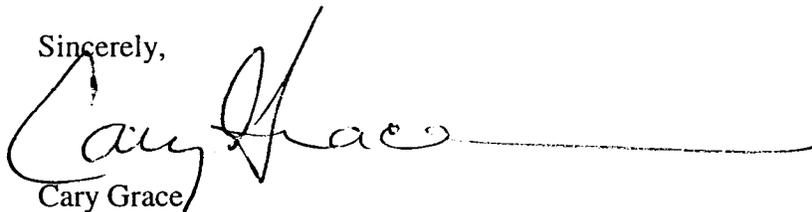
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in cursive script, appearing to read "Cary Grace", followed by a horizontal line extending to the right.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/krl

Ref: ID# 203843

Enc. Submitted documents

c: Mr. Steven Tendrup
301 Division Street
Big Fork, Minnesota 55628
(w/o enclosures)