



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 11, 2005

Mr. David L. Hay  
Dallas County Community College District  
701 Elm Street  
Dallas, Texas 75202-3299

OR2005-06065

Dear Mr. Hay:

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# 227760.

The Dallas County Community College District (the "district") received a request for "any and all investigative reports" related to an incident involving the requestor's client. You inform us that the requestor subsequently narrowed the request to include only incident reports. You state that some responsive information has been released to the requestor. You claim that some of the requested information is excepted from disclosure under sections 552.108, 552.117, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information, a portion of which consists of representative sample information.<sup>2</sup>

Initially, we must address your obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (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

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<sup>1</sup>Although you also seek to withhold certain information in reliance on Open Records Decision No. 127 (1976), we note that it is not an exception to disclosure but instead summarizes the types of information considered to be basic information under section 552.108 of the Government Code. We understand you, therefore, to assert section 552.108 as an exception to disclosure for this information.

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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. You state that the district received the present request for information on April 25, 2005. The district did not submit the required information until May 17, 2005. Consequently, the district failed to comply with the requirements of section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural 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 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).

Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See Open Records Decision No. 630* (1994). Section 552.108 is a discretionary exception that protects a governmental body's interests and, as such, may generally be waived by the governmental body. *See Open Records Decision No. 177* (1977) (governmental body may waive statutory predecessor to section 552.108); *see also Open Records Decision No. 665 at 2 n.5* (2000) (discretionary exceptions generally). Discretionary exceptions generally cannot provide a compelling reason to withhold information from the public. Thus, the district's claim under section 552.108 is not a compelling reason to overcome the presumption of openness in this instance under section 552.302, and none of the submitted information may be withheld on that basis. *See Open Records Decision No. 663 at 5* (1999) (untimely request for decision resulted in waiver of discretionary exceptions). However, the claim under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See Open Records Decision No. 586 at 3* (1991) (interests of another law enforcement agency under statutory predecessor to section 552.108 overcame failure of governmental body that received request for information to timely seek attorney general decision). In this instance, you assert that the Dallas-Fort Worth Airport's Department of Public Safety (the "department") may have a law enforcement interest in the submitted information. As of this date, the department has not submitted comments to us explaining why any portion of the submitted information should not be released. We therefore conclude that the district may not withhold any of the submitted information under section 552.108 of the Government Code on behalf of the department. However, sections 552.117 and 552.130 can provide compelling reasons to withhold information, and we will consider your arguments regarding these exceptions. *See Open Records Decision No. 150* (1977) (compelling reason exists to withhold information when third party interests are at stake or when information is made confidential by another source of law).

You assert that some of the information in Exhibit 5 is excepted under section 552.117 of the Government Code. Section 552.117(a)(2) excepts the home addresses and telephone

numbers, social security numbers, and family member information of a peace officer as defined by Article 2.12 of the Code of Criminal Procedure, regardless of whether the officer made an election under section 552.024. Gov't Code § 552.117(a)(2); *see* Open Records Decision No. 622 (1994). In this instance, however, the requestor is an attorney representing the peace officer at issue, and therefore has a special right of access to the officer's section 552.117 information. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to information held by governmental body that relates to person and is protected from disclosure by laws intended to protect that person's privacy interests).

Finally, you assert that some of the submitted information is excepted under section 552.130 of the Government Code. Section 552.130 provides in relevant part the following:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. The district must withhold the Texas motor vehicle record information we have marked under section 552.130. We note that the requestor has a special right of access under section 552.023 of the Government Code to the driver's license information of his client. *See* Gov't Code § 552.023.

In summary, the district must withhold the marked information under section 552.130. It must release the remaining information at issue.<sup>3</sup>

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

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<sup>3</sup>Because some of the information is confidential with respect to the general public, if the district receives a future request for this information from an individual other than the requestor, the requestor's client, or her authorized representative, the district should again seek our decision.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/krl

Ref: ID# 227760

Enc. Submitted documents

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