ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 24, 2006

Mr. Timothy Guin
Chief of Police
Wharton Police Department
220 South Fulton
Wharton, Texas 77488

OR2006-00773

Dear Chief Guin:

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# 240748.

The Wharton Police Department (the "department") received a request for a specific police report. You claim that the submitted 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.

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). In this instance, you do not explain, nor do the documents demonstrate, how the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. Thus, we find that you have not demonstrated the applicability of section 552.108(a)(1) to the submitted information. Accordingly, the department may not withhold the information under section 552.108 of the Government Code.

We note that the submitted information contains Texas drivers' license numbers that are excepted from public disclosure under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

> (a) Information is excepted from required public disclosure if the information relates to:
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> > (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. We note, however, that section 552.130 protects privacy interests. Section 552.023 of the Government Code gives a person or the person's authorized representative a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest as subject of the information. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the requestor has a right of access to his own driver's license number and the department may not withhold it under section 552.130. Accordingly, however, the department must withhold the Texas drivers' license numbers of the other individuals, which we have marked, under section 552.130 of the Government Code.

Next, we note that some of the submitted information is subject to section 552.136, which provides:

> (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:
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> > (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. We have marked the account number that must be withheld pursuant to section 552.136 of the Government Code.

Next, we note that the submitted information contains e-mail addresses. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses contained in the submitted information are not the type specifically excluded by section 552.137(c). Therefore, unless the individuals whose e-mail addresses are at issue consented to release of their e-mail addresses, the department must withhold them in accordance with section 552.137 of the Government Code. We note, however, in this instance, the requestor has a special right of access to his own e-mail address, and the department may not withhold that information from him under section 552.137 of the Government Code. *See* Gov't Code § 552.023. Thus, unless the individuals whose e-mail addresses are at issue consented to release of their e-mail addresses, the department must withhold those e-mail addresses, which we have marked, under section 552.137 of the Government Code.

We also note that the submitted information contains social security numbers. Section 552.147 of the Government Code[1] provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. We note, however, that the requestor has a special right of access to his own social security number and the department may not withhold it under section 552.147. *See* Gov't Code § 552.023. Accordingly, the department must withhold the social security numbers of the other individuals, which we have marked, under section 552.147 of the Government Code.

Finally, we note that some of the materials at issue are protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the department must withhold the Texas drivers' license numbers we have marked under section 552.130 of the Government Code. The department must withhold the account number we have marked under section 552.136 of the Government Code. Unless

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[1]Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon).

the individuals whose e-mail addresses are at issue consented to release of their e-mail addresses, the department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code. Additionally, the department must withhold the social security numbers we have marked under section 552.147 of the Government Code. The remaining information must be released, but any copyrighted information may only be released in accordance with copyright law.

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).

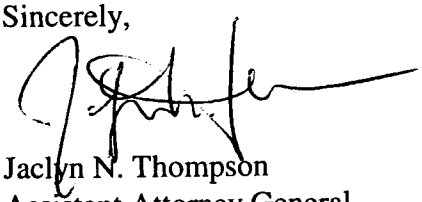
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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 Office of the Attorney General 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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 240748

Enc. Submitted documents

c: Gaylan Segrest
2313 N. Richmond Road
Wharton, TX 77488
(w/o enclosures)