



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 3, 2006

Sheriff Kenneth Hammack
Polk County Sheriff's Office
1733 North Washington
Livingston, Texas 77351

OR2006-03292

Dear Sheriff Hammack:

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# 245347.

The Polk County Sheriff's Office (the "sheriff") received a request for information pertaining to a specific incident. You claim that the 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.

Section 552.108 of the Government Code provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). A governmental body claiming section 552.108(a)(2) or 552.108(b)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. Although you raise sections 552.108(a)(2) and 552.108(b)(2) for the requested information, you state that this information pertains to a case that is pending with the grand jury. Based upon these two different representations, we find that you have provided our office with conflicting arguments regarding the requested information. You have not made it clear whether the information pertains to an open or closed case. Therefore, we find that you have not adequately demonstrated that either section 552.108(a)(2) or 552.108(b)(2) is applicable to this information, and the sheriff may not withhold it under either section. *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

We note, however, that the submitted information contains Texas driver's license numbers.¹ Section 552.130 of the Government Code excepts from disclosure information 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. Gov't Code § 552.130(a)(1) - (2). We note that section 552.130 is applicable only to Texas driver's license and motor vehicle information and does not encompass out-of-state driver's license or motor vehicle information. Thus, the sheriff must withhold the information that we have marked under section 552.130.

Finally, we note that the submitted information contains social security numbers. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.² Gov't Code § 552.147.

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

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this officer under the Act.

The sheriff must withhold the social security numbers that we have marked under section 552.147.

In summary, the sheriff must withhold the marked driver's license numbers under section 552.130, and the marked social security numbers under section 552.147 of the Government Code. The remaining submitted information must be released.³

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).

³We note that the requestor has a right of access to information in the submitted documents that otherwise would be excepted from release under the Act. See Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information related to that person that are protected from public disclosure by laws intended to protect that person's privacy interests). Thus, the sheriff must again seek a decision from this office if it receives a request for this information from a different requestor.

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,

A handwritten signature in black ink that reads "Shelli Egger". The signature is written in a cursive style with a large initial "S" and "E".

Shelli Egger
Assistant Attorney General
Open Records Division

SE/sdk

Ref: ID# 245347

Enc. Submitted documents

c: Mr. Bill Harrison
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(w/o enclosures)