



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2006

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Safety
P.O. Box 4087
Austin, Texas 78773

OR2006-06350

Dear Ms. Smith:

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# 251642.

The Texas Department of Public Safety (the "department") received two requests for information pertaining to an automobile accident. You state that you will release the crash report and basic information from the responsive incident report. You claim that the submitted information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we must address the department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. You state that the department received the first request on March 21, 2006. We note however that the department did not request a

¹We 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.

decision from this office until April 11, 2006. Consequently, the department failed to request a decision within the ten-business-day period mandated by section 552.301(b) of the Government Code.

You argue that, because the department provided the requestor with notice of a fee associated with the search for and production of the responsive accident report, the department's deadlines under section 552.301 were tolled until the department received a response to its notice. *See* Trans. Code § 550.065(d) ("The fee for a copy of the [accident] report . . . is \$6 or the actual cost of the preparation of the copy, whichever is less.") However, you do not cite to, nor are we aware of, any law which provides for the tolling of the deadlines imposed by section 552.301 in this situation. Therefore, we find that the department's deadlines were not tolled by providing the requestor with notice of charges under section 550.065 of the Transportation Code.

When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. *See* Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). You raise sections 552.108, 552.130, and 552.147 of the Government Code. However, section 552.108 is a discretionary exception under the Act and does not constitute a compelling reason sufficient to overcome the presumption of openness. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, you may not withhold the submitted information under section 552.108 of the Government Code. However, sections 552.130 and 552.147 of the Government Code can provide compelling reasons for overcoming the presumption of openness. Accordingly, we will address your arguments under these sections.

Section 552.130 of the Government Code requires a governmental body to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Gov't Code § 552.130(a)(1). The driver's license number you have marked and the remaining Texas motor vehicle record information we have marked are subject to section 552.130. Accordingly, this information must be withheld from the second requestor.

You raise section 552.147 of the Government Code for the submitted social security number. Section 552.147 provides that "[t]he social security number of a living person is excepted

from” required public disclosure under the Act. Therefore, the department must withhold the social security number from the second requestor.²

We note, however, that the first requestor may be the suspect’s insurance provider. As such, this requestor may have a right of access to the suspect’s Texas motor vehicle record information and social security number under section 552.023 of the Government Code. Section 552.023 provides a person or a person’s authorized representative a special right of access to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect the person’s privacy interests. In this instance, it is not clear that the requesting insurance company is the individual’s authorized representative. Therefore, we are forced to rule conditionally.

If the requesting insurance company is not the suspect’s authorized representative, then it does not possess a right of access under section 552.023 of the Government Code, and the marked Texas motor vehicle record information and social security number must be withheld under sections 552.130 and 552.147 of the Government Code, respectively. However, if the requesting insurance company is the suspect’s authorized representative and has a right of access under section 552.023, then the suspect’s Texas motor vehicle record information and social security number must be released to the insurance company. The driver’s license numbers which do not pertain to the suspect must be withheld from the insurance company under section 552.130 notwithstanding any right of access to the suspect’s information.

In summary, the marked Texas motor vehicle record information and social security number must be withheld from the second requestor pursuant to sections 552.130 and 552.147 of the Government Code, respectively. If the requesting insurance company does not have a right of access under section 552.023 of the Government Code to the suspect’s information, then the marked Texas motor vehicle record information and social security number must be withheld from it as well. However, if the insurance company does possess a right of access to the suspect’s information under section 552.023, then the suspect’s Texas motor vehicle record information and social security number must be released to the insurance company. The remaining driver’s license numbers must still be withheld from the insurance company.

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

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 office under the Act.

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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 251642

Enc. Submitted documents

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