



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 7, 2006

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2006-08850

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# 254602.

The Texas Department of Public Safety (the "department") received a request for information relating to a fatal traffic collision, including the department's complete investigative file (the "investigative records") and a named individual's driving record (the "driving records"). You indicate that the department has released some of the requested information. You claim that the remaining information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Initially, we address the department's obligations under section 552.301 of the Government Code. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the

request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

In this instance, the department did not claim an exception to disclosure under section 552.130 within the ten-business-day period prescribed by section 552.301. Furthermore, the department did not submit the requested driving records within the fifteen-business-day period prescribed by section 552.301(e). Therefore, the driving records are presumed to be public under section 552.302. This statutory presumption can generally be overcome when the information is confidential by law or third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. Although the department claims an exception to disclosure under section 552.108 of the Government Code, that section is a discretionary exception 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 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver)*. The department's claim under section 552.108 is not a compelling reason for non-disclosure under section 552.302. *See Open Records Decision No. 586 at 2-3 (1991)*. In failing to submit the driving records within the time prescribed by section 552.301, the department has waived section 552.108 with respect to that information. Therefore, the driving records may not be withheld from the requestor on the basis of the department's claim under section 552.108. We note that the law enforcement interest under section 552.108 of a governmental body other than the one that did not comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *Id.* In this instance, however, you have not informed us that any other governmental body with a law enforcement interest in the driving records has requested that the department seek to withhold that information under section 552.108. Therefore, the department may not withhold any of the information contained in the driving records under section 552.108. However, we will consider your claim with respect to the driving records under section 552.130 of the Government Code, as the applicability of that exception can provide a compelling reason for non-disclosure under section 552.302. Additionally, we will consider your timely claim with respect to the investigative records under section 552.108.

Section 552.108 of the Government Code excepts from public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental

body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the investigative records are related to a pending criminal case. Based on your representation, we conclude that section 552.108(a)(1) is applicable to the investigative records. *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).

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The department must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the information in the investigative records under section 552.108(a)(1) of the Government Code.

Next, we address the submitted driving records. You state that the public availability of these records is governed by sections 521.046, 521.0475, and 730.007 of the Transportation Code. Section 521.046 provides as follows:

(a) In addition to the information authorized to be released under Section 521.045, on receipt of a written request and payment of a \$6 fee, the department may disclose that information and information regarding each reported motor vehicle moving violation, as defined by department rule, resulting in a traffic law conviction and each motor vehicle accident in which the individual received a citation, by date and location, within the three years preceding the date of the request, to a person who:

(a) is eligible to receive the information under Chapter 730; and

(b) submits to the department the individual’s driver’s license number or the individual’s full name and date of birth.

*Id.* § 521.046(a).<sup>1</sup> Section 521.0475 of the Transportation Code provides in relevant part that “the department shall provide a certified abstract of a complete driving record of a license

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<sup>1</sup>Section 521.045 of the Transportation Code provides for the disclosure by the department of an individual’s date of birth, current license status, and most recent address to a person who is eligible to receive the information under chapter 730 of the Transportation Code and submits to the department the individual’s driver’s license number or full name and date of birth. *See* Transp. Code § 521.045.

holder, for a fee of \$20, to the license holder or a person eligible to receive the information under Sections 730.007(a)(2)(A), (D), and (I). *Id.* § 521.0475(a).

Section 730.007 of the Transportation Code enumerates requestors who are eligible to obtain information from the department. Section 730.007 provides in relevant part:

(a) Personal information obtained by an agency in connection with a motor vehicle record may be disclosed to any requestor by an agency if the requestor:

(1) provides the requestor's name and address and any proof of that information required by the agency; and

(2) represents that the use of the personal information will be strictly limited to:

...

(D) use in conjunction with a civil, criminal, administrative, or arbitral proceeding in any court or government agency or before any self-regulatory body, including service of process, investigation in anticipation of litigation, execution or enforcement of a judgment or order, or under an order of any court[.]

*Id.* § 730.007(a)(1)-(2)(D). In this instance, the requestor states that she seeks access to the submitted driving records for use in conjunction with civil litigation.

You state that the submitted driving records fall within the scope of sections 521.046 and 521.0475. You also inform us that the requestor will have a right of access to the driving records under section 730.007(a)(2)(D), provided that she otherwise complies with the access requirements of sections 521.046, 521.0475, and 730.007. *See also id.* § 730.012 (agency may require requestor to provide reasonable assurance of requestor's right of access to information and to make or file written application in form and containing any certification requirement agency may prescribe). Based on your representations, we conclude that the department must release the submitted driving records to the requestor upon her compliance with sections 521.046, 521.0475, and 730.007 of the Transportation Code. Otherwise, the department must withhold the driving records under sections 521.046 and 521.0475.<sup>2</sup>

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<sup>2</sup>As we are able to make these determinations, we do not address section 552.130 of the Government Code.

In summary: (1) except for the basic information that must be released under section 552.108(c), the department may withhold the investigative records under section 552.108(a)(1) of the Government Code; and (2) upon compliance with the access requirements of sections 521.046, 521.0475, and 730.007 of the Transportation Code, the driving records must be released to the requestor; otherwise, the department must withhold the driving records under sections 521.046 and 521.0475.

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).

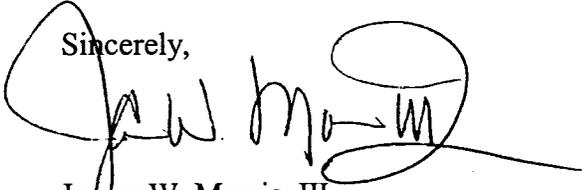
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in black ink, appearing to read 'J W Morris III', with a large, stylized flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 254602

Enc: Submitted documents

c: Ms. Gail Johns  
Hardy & Johns  
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(w/o enclosures)