



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 8, 2006

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2006-08863

Dear Ms. Chang:

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# 256089.

The City of Houston (the "city") received a request for "Houston Police Department Incident Report Number 181860405."<sup>1</sup> You claim that the requested 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.

Initially, we must address the city'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(e) provides, in part, that the governmental body must submit a copy of the request for information to this office not later than the fifteenth business day after the date of its receipt of the request. *See Gov't Code § 552.301(e)(1)(B)*. Section 552.302 provides that if a governmental body fails to comply with section 552.301 in requesting a decision, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the

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<sup>1</sup>As you have not provided this office with a copy of the request for information, we take our description from your brief.

information. *See id.* § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

In this instance, the city has not submitted a copy of the request for information to this office. Therefore, the submitted information is presumed to be public and must be released, unless there is a compelling reason to withhold any of the information. The presumption that information is public under section 552.302 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 you seek to withhold the submitted information under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver)*. *But see Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure)*. The city's claim under section 552.108 is not a compelling reason for non-disclosure under section 552.302. In failing to comply with section 552.301 of the Government Code, the city has waived section 552.108. *See Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions)*. Therefore, the city may not withhold any of the submitted information under section 552.108 of the Government Code. However, because sections 552.130 and 552.147 can provide compelling reasons to for non-disclosure under section 552.302, we will consider the city's arguments under these exceptions.

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. Therefore, the city must withhold the Texas motor vehicle record information we have marked under section 552.130.

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. *Id.* § 552.147. Therefore, the city must withhold the social security numbers contained in the submitted information under section 552.147.<sup>2</sup>

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<sup>2</sup>We 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.

We note that a portion of the remaining submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>3</sup> Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office found that some kinds of medical information or information indicating disabilities or specific illnesses is protected under common law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). The city must withhold the information we have marked under section 552.101 and common law privacy.

In summary, the city must withhold: 1) the information we have marked under section 552.130; 2) the social security numbers contained in the submitted information under section 552.147; and 3) the information we have marked under section 552.101 and common law privacy. The remaining information must be released.

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

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Lisa V. Cubriel  
Assistant Attorney General  
Open Records Division

LVC/eb

Ref: ID# 256089

Enc. Submitted documents

c: Ms. Kenya R. Harrold  
Shook, Hardy & Bacon, L.L.P.  
JPMorgan Chase Tower  
600 Travis Street, Suite 1600  
Houston, Texas 77002-2911  
(w/o enclosures)