ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 29, 2006

Ms. Jo Spurger
Administrative Assistant
Somervell County Sheriff's Department
750 E. Gibbs Blvd.
Glen Rose, TX 76043

OR2006-09970

Dear Ms. Spurger:

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# 262820.

The Somervell County Sheriff's Department (the "department") received a request for information relating to a specified 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.

Initially, we note that the department was untimely in its request for an attorney general decision pursuant to section 552.301(b) of the Government Code. *See* Gov't Code § 552.301. Under section 552.301(b), a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* at § 552.301(a), (b). Although the department received the request for information on August 3, 2006, its request for a decision from this office was not postmarked until August 18, 2006. *See id.* at § 552.308 (request is timely if sent by first class United States mail or common or contract carrier properly addressed with postage or handling charges prepaid and bears post office cancellation mark or receipt mark of the carrier indicating a time within that period). Consequently, we find that the department failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* at § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body

must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason for non-disclosure exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977).

In this instance, you claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 is a discretionary exception and, under these circumstances, does not provide a compelling reason to overcome the presumption that the submitted information is public. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions are intended to protect only the interests of governmental body as distinct from exceptions intended to protect information deemed confidential by law or interests of third parties). Accordingly, we find that the department has waived its interest under section 552.108(a)(1), and none of the information may be withheld on that basis.

We note, however, that the submitted information contains Texas motor vehicle information, which is confidential under section 552.130 of the Government Code. Specifically, section 552.130 excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). Pursuant to this provision, the department must withhold the Texas driver's license information that we have marked. The requestor does, however, have a right of access to her own Texas-issued motor vehicle information under section 552.023. *See id.* at 552.023 (a person has a special right of access to his own private information). Thus, with the exception of the marked information which is confidential under section 552.130, the department must release the submitted information.

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,

Alix K. Cornett
Assistant Attorney General
Open Records Division

AKC/krl

Ref: ID# 262820

Enc. Submitted documents

c: Ms. Jana Trimble
P. O. Box 1562
Glen Rose, Texas 76043
(w/o enclosures)