



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 12, 2006

Ms. Linda L. Sjogren
Shotts & Sjogren, LLP
P.O. Box 388
Dublin, Texas 76446

OR2006-10568

Dear Ms. Sjogren:

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# 263190.

The City Marshal of the City of San Angelo (the "city marshal") received a request for information relating to a specified arrest, including a video. You state that the city marshal has released some of the requested information. You claim that other responsive information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. You also inform us that some of the requested information is the subject of a previous open records letter ruling. We have considered your arguments and have reviewed the information you submitted.

You inform us that the requested video is the subject of Open Records Letter No. 2006-10349 (2006). You do not indicate that there has been any change in the law, facts, and circumstances on which the previous ruling is based. We therefore conclude that the city marshal may continue to rely on Open Records Letter No. 2006-10349 with respect to the requested video. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

Section 552.108 of the Government Code excepts from 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 seek to withhold

pages 4 through 8 of Exhibit A and all of the information in Exhibits B and C under section 552.108(a)(1). You state that the information in question is related to an ongoing investigation and pending prosecution. Based on your representation, we conclude that the city marshal may withhold pages 4-8 of Exhibit A and Exhibits B and C under section 552.108(a)(1). *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 552.117(a)(1) of the Government Code excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. We note, however, that the protections of section 552.117 are applicable only to information that a governmental body holds in its capacity as an employer. *See Gov't Code* § 552.117 (providing that employees of governmental entities may protect certain personal information held by their employers); *see also id.* § 552.024 (establishing election process for Gov't Code § 552.117). The information that you seek to withhold under section 552.117 is contained in a law enforcement record of a criminal investigation. The city marshal holds that information as a law enforcement agency, rather than as an employer. Therefore, the information in question may not be withheld from disclosure under section 552.117.

Section 552.130 of the Government Code excepts from public disclosure information that relates to a motor vehicle title or registration issued by an agency of this state. *See Gov't Code* § 552.130(a)(2). We agree that the Texas license plate and vehicle identification numbers that you have marked must be withheld under section 552.130.

In summary: (1) the city marshal may continue to rely on Open Records Letter No. 2006-10349 (2006) with respect to the requested video; (2) the city marshal may withhold pages 4 through 8 of Exhibit A and Exhibits B and C under section 552.108(a)(1) of the Government Code; and (3) the marked Texas license plate and vehicle identification numbers must be withheld under section 552.130 of the Government Code. The rest of the submitted information must be released.¹

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

¹As we are able to make these determinations, we need not address section 552.101 of the Government Code.

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).

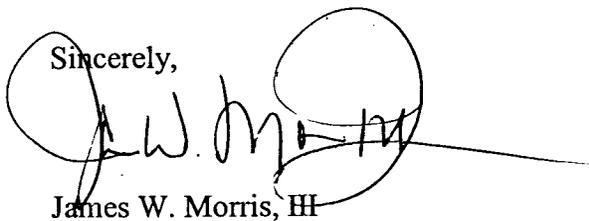
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 circular flourish on the left side and a long horizontal line extending to the right.

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

JWM/vh

Ref: ID# 263190

Enc: Submitted documents

c: Ms. Kathy Munoz
KLST-TV/KSAN-TV
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(w/o enclosures)