



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2006

Ms. Nicole B. Webster
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2006-11974

Dear Ms. Webster:

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# 262423.

The City of Waco Police Department (the "department") received a request for certain police reports. You state that the department will redact the social security numbers in the requested reports based on section 552.147 of the Government Code.¹ You claim that portions of the requested information are excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The department did not comply with the Act's procedural requirements for seeking an open records ruling. Subsections 552.301(a) and (b) of the Act provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not

¹ Section 552.147(b) 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.

been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301. You state that the department received the request for information on July 18, 2006. The postmark on the department's request for a ruling is dated August 14, 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. *See id.* §§ 552.308, .301. The department also failed to comply with the deadline of section 552.301(e). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Because the request for a decision and submissions were not timely submitted to this office, the requested information is presumed to be public information and must be released unless the city establishes a compelling reason to withhold the information. Gov't Code § 552.302, *see 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). The applicability of section 552.108 is generally not a compelling interest to overcome the presumption that the information at issue is public. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests); *but see* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information under section 552.108 provides compelling reason for nondisclosure of the information). You have not shown that another law enforcement agency has an interest that would compel protection of the information under section 552.108. Accordingly, the department may not withhold the information at issue based on section 552.108.

Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

We agree that the department must withhold the Texas driver's license number and license plate numbers under section 552.130. The department must release the remaining 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/sdk

Ref: ID# 262423

Enc: Submitted documents

c: Ms. Rhonda Johnson
Waco Housing Authority
P.O. Box 978
Waco, Texas 76703
(w/o enclosures)