



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2006

Ms. Leona Clay
Administrative Assistant
Harker Heights Police Department
120 South Harley Drive
Harker Heights, Texas 76548

OR2006-12555

Dear Ms. Clay:

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# 262713.

The Harker Heights Police Department (the "department") received a request for: (1) copies of all police reports, dispatch records, and call and radio logs pertaining to a specified address on specified dates; and, (2) any data or statistics pertaining to property crimes committed in Harker Heights during 2004. You state that you have provided the requestor with a portion of the requested information. However, you claim that the remaining 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 you did not submit information responsive to the second category of the request. As you have not submitted this information, we assume the department has already released it to the requestor. If not, the department must do so at this time to the extent that the information existed on the date the department received the request for information. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances). We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information.

Next, we address the department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after receiving the written request for information. *See* Gov't Code

§ 552.301(b). You inform us that the department received the request for information on July 31, 2006. However, the department did not request a decision from this office until August 18, 2006. You state that you notified the requestor, via letter faxed on August 10, 2006, of the need for more time to process the request. However, we note that the deadlines contained in section 552.301 are fixed by statute and cannot be altered. *See* Open Records Decision No. 541 at 3 (1990). Thus, we conclude that you failed to comply with the procedural requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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 section 552.302); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason for non-disclosure exists only where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977).

Here, you claim the information is excepted from disclosure under section 552.108 of the Government Code. We note, however, that section 552.108 is a discretionary exception to disclosure 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 (2002) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 586 (1991) (governmental body may waive section 552.108), 177 at 3 (1977) (statutory predecessor to section 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. In failing to comply with section 552.301, the department has waived this exception. Therefore, the department may not withhold any of the requested information under section 552.108. We note, however, that portions of the submitted information are subject to sections 552.101, 552.130, and 552.147, which can provide compelling reasons to withhold information. Therefore, we will address these exceptions.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses laws that make criminal history record information ("CHRI") confidential. CHRI "means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions" but does not include "driving

¹The Office of the Attorney General will raise mandatory exceptions like sections 552.101, 552.130, and 552.147 on behalf of a governmental body but will not ordinarily raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

record information maintained by [the Department of Public Safety (“DPS”)] under Subchapter C, Chapter 521, Transportation Code.” Gov’t Code § 411.082(2).

Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”), (2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Under chapter 411 of the Government Code, a criminal justice agency may obtain CHRI from DPS or from another criminal justice agency. Gov’t Code §§ 411.083(b)(1), .087(a)(2), .089(a). However, CHRI so obtained is confidential and may only be disclosed in very limited instances. Gov’t Code § 411.084; *see also* Gov’t Code § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, the department must withhold the information we have marked under section 552.101 in conjunction with chapter 411.

Next, we note that the submitted information includes Texas motor vehicle record information that is excepted under section 552.130 of the Government Code. Section 552.130 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(a)(1), (2). In accordance with section 552.130 of the Government Code, the department must withhold the marked Texas motor vehicle record information.

Finally, we note that the submitted information contains social security numbers. 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. Gov’t Code § 552.147. Therefore, the department must withhold the social security numbers we have marked pursuant to section 552.147 of the Government Code.

In sum, the department must withhold: (1) the marked CHRI under section 552.101 of the Government Code in conjunction with chapter 411; (2) the marked Texas motor vehicle record information pursuant to section 552.130 of the Government Code; and (3) the social security numbers we have marked pursuant to section 552.147 of the Government Code. 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).

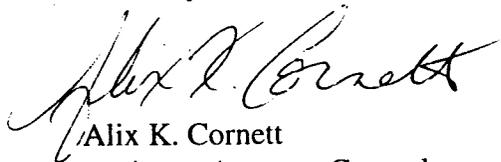
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 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# 262713

Enc. Submitted documents

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(w/o enclosures)